

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

DIRECTV, LLC

v.

**TRIBUNE COMPANY, DEBTOR-IN-
POSSESSION**

CSR-_____

**EXPEDITED TREATMENT
REQUESTED**

COMPLAINT FOR FAILURE TO NEGOTIATE IN GOOD FAITH

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April 2, 2012

SUMMARY

Broadcasters and distributors are obligated by statute to negotiate carriage agreements in good faith. There are very few negotiating tactics that the Commission has identified as bad faith *per se*. Yet Tribune has engaged in such tactics in its negotiations with DIRECTV. ***Two days prior to expiration of the existing carriage arrangement, the parties reached an agreement in principle for continued carriage. The following day, however, Tribune reneged on that agreement. Tribune later confirmed that its management had been overruled by the hedge fund and investment bank creditors that hold the company's debt, including Oaktree Partners, Angelo Gordon, JP Morgan Chase, Bank of America, and Citibank.***

Two of the primary obligations of negotiating parties under the Commission's "good faith" rules are to designate a representative with authority to make binding representations and to not unreasonably delay negotiations. Yet DIRECTV negotiated with Tribune for months, only learning on the very eve of expiration that it had never been dealing with anyone who had the authority required under the rules. Indeed, DIRECTV *still* does not know with whom it should be speaking—Tribune's CEO or its associated hedge funds and investment banks.

Moreover, Tribune has sought Commission permission to transfer control of its broadcast licenses to its creditors but has not yet obtained that permission. It nonetheless appears that Tribune may have already granted these entities control of at least its retransmission consent negotiations—essentially granting them control over the finances of Tribune's broadcast licensees. If so, this action violates the Communications Act, and

thus also constitutes “outrageous conduct” in violation of the Commission’s good faith rules.

Accordingly, the Commission should expeditiously and emphatically find that such tactics violate Tribune’s obligation to negotiate in good faith. Given the disruption in service to millions that Tribune and its creditor banks and hedge funds have caused, the Commission should order Tribune to both appoint a team with full authority to negotiate a binding agreement, and reauthorize DIRECTV’s carriage of Tribune’s local broadcast stations while those negotiations occur. In addition, the Commission should investigate whether control over Tribune’s broadcast stations has been improperly transferred to the hedge funds and investment banks that hold the company’s debt, and sanction those responsible if it finds such a violation of its rules.

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COMPLAINT FOR FAILURE TO NEGOTIATE IN GOOD FAITH

1. Complainant DIRECTV, LLC (“DIRECTV”) hereby brings this Complaint for Failure to Negotiate in Good Faith against Respondent Tribune Company, Debtor-in-Possession (“Tribune”).

2. Tribune owns 23 local television stations in 19 markets nationwide. Tribune also owns the last remaining national “superstation,” WGN. DIRECTV carries Tribune’s stations pursuant to an agreement (the “Carriage Agreement”) that expired on March 31, 2012.

3. Tribune or its predecessor has been in bankruptcy since December 2008. Its creditors include some of the largest hedge funds and investment banks in the country.

4. After negotiating for months to renew the Carriage Agreement, the parties reached an agreement in principle two days prior to expiration of that agreement. The next day, however, Tribune reneged on that agreement, informing DIRECTV that its creditors had overruled its management.

5. Tribune has thus failed to designate a representative with authority to make binding representations, in *per se* violation of the Commission's "good faith" negotiation rules. 47 C.F.R. § 76.65(b)(1)(ii).

6. Moreover, by misleading DIRECTV as to the scope of authority of its negotiating team, Tribune has unreasonably delayed negotiations in violation of the Commission's rules. 47 C.F.R. § 76.65(b)(1)(iii).

7. In addition, substantial questions exist as to whether Tribune has prematurely relinquished control over its broadcast licenses prior to receiving Commission authorization, conduct that, if true, would constitute "outrageous" conduct under the "totality of the circumstances" test. 47 C.F.R. § 76.65(b)(2).

8. DIRECTV thus respectfully requests, pursuant to 47 C.F.R. §§ 76.65 and 76.7, that the Commission (1) conclude that Tribune has failed to negotiate in good faith, (2) order Tribune to immediately recommence negotiations with DIRECTV using personnel fully authorized to reach agreement; and (3) direct Tribune to permit DIRECTV to carry its broadcast stations' signals while such negotiations take place. The Commission should also investigate Tribune's conduct in this matter to determine whether it has transferred control over its licenses without proper authorization, and take such corrective action as it deems appropriate. Given that the Carriage Agreement has already expired and over five million viewers are now being denied access to Tribune's broadcast stations, DIRECTV also respectfully requests expedited treatment of this complaint.

JURISDICTION

9. The Commission has jurisdiction to consider this Complaint under 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. § 76.65, and 47 C.F.R. § 76.7.

THE COMPLAINANT

10. DIRECTV, the nation's leading DBS service provider, has over 19 million subscribers, all of whom receive multiple channels of digital video programming. Accordingly, DIRECTV is a "multichannel video programming distributor" ("MVPD") as that term is used in 47 C.F.R. § 76.65(a). DIRECTV's address is 2230 E. Imperial Highway, El Segundo, CA 90245.

THE DEFENDANT

11. Tribune is the debtor-in-possession resulting from the bankruptcy of its predecessor, Tribune Company, in a proceeding that is still pending before the Bankruptcy Court. *See* Comments of Tribune Company, Debtor-in-Possession, MB Docket No. 09-182, at 3 n.5 (filed Mar. 5, 2012). Tribune's address is 435 N. Michigan Avenue, Chicago, Illinois 60611.

12. Among Tribune's creditors in bankruptcy are hedge funds Oaktree Capital Management, L.P. ("Oaktree") and Angelo, Gordon & Co., L.P. ("Angelo Gordon"); and investment banks JPMorgan Chase Bank N.A. ("JPMorgan Chase"); Bank of America, N.A. and Banc of America Securities LLC ("Bank of America"), and Citicorp North America, Inc. and Citigroup Global Markets ("Citibank"). *See* Chapter 11 Official Creditors' Committee Information Website, *available at* <http://www.kccllc.net/tribunecommittee>; Notice of Appearance and Request for Service of Papers of Bank of America, N.A. and Banc of America Securities LLC, Case No. 08-

13141 (KJC) (Bankr. D. Del, filed Feb. 16, 2010); Notice of Appearance and Request for Service of Papers Filed by Citicorp North America, Inc. and Citigroup Global Markets, Inc. Case No. 08-13141 (KJC) (Bankr. D. Del, filed Feb. 11, 2010).

13. Tribune operates businesses in publishing, digital and broadcasting, including 23 television broadcast stations. A list of Tribune's television broadcast stations is attached as Exhibit 1.

14. Tribune is thus a "television broadcast station" with respect to its retransmission consent negotiations, as that term is used in 47 C.F.R. § 76.65, and Tribune and DIRECTV are both "negotiating entities" for purposes of those rules.

STATEMENT OF FACTS

15. DIRECTV and Tribune are parties to a Carriage Agreement executed by their predecessors-in-interest (respectively, DIRECTV, Inc. and Tribune Broadcasting Company and Tower Distribution Company) governing DIRECTV's carriage of Tribune's 23 television broadcast stations in their respective local markets. The Carriage Agreement also includes an understanding under which Tribune provides certain transport and program-replacement services in connection with DIRECTV's national carriage of WGN. The Carriage Agreement expired on March 31, 2012.

16. Authorized DIRECTV representatives and members of Tribune management (who DIRECTV believed were authorized) had discussed renewal of the Carriage Agreement off and on for nearly a year. Tribune sent its first proposal to DIRECTV in early February 2012, commencing two months of negotiation in earnest. In these negotiations, Tribune had insisted on fees totaling more than three times what DIRECTV now pays under the Carriage Agreement.

17. On March 19, 2012, DIRECTV's Chairman and CEO Michael White had dinner with Tribune's President and CEO Eddy Hartenstein at which they discussed renewal of the Carriage Agreement. Mr. Hartenstein told Mr. White that he was worried about the timing of the soon-to-expire Carriage Agreement, and insisted that the parties get "all the right people in the room to negotiate" and finalize an agreement. He specifically suggested that Nils Larsen, President & CEO of Tribune Broadcasting, was such a person. Mr. Hartenstein then suggested that Tribune's negotiating team come to Los Angeles to negotiate in person.

18. On March 22, 2012, the proposed meeting took place. Present on behalf of DIRECTV were Derek Chang, Executive Vice President, Content Strategy and Development; Dan Hartman, Senior Vice President, Program Acquisitions; and Linda Burakoff, Vice President, Programming Acquisitions. Present on behalf of Tribune were Mr. Larsen; Julio Marengi, Executive Vice President and General Manager of WGN America; and Kevin Connor, Senior Vice President, Affiliate Sales and Marketing. Also present was Lindsay Gardner, who was identified as a consultant to both Tribune and to a fund affiliated with its creditor, Oaktree.

19. On March 23, Tribune sent DIRECTV a carriage proposal. DIRECTV responded with a counteroffer on March 25.

20. The next day, without responding to DIRECTV's offer, Tribune issued a press release warning DIRECTV subscribers that they were in danger of losing Tribune's service. See "Tribune Broadcasting Informs DirecTV Subscribers of Possible Service Interruptions," Press Release (Mar. 26, 2012), *available at* <http://corporate.tribune.com/pressroom/?p=4047>.

21. The following day, March 27, Tribune's Mr. Hartenstein spoke with Larry Hunter, DIRECTV's Executive Vice President and General Counsel, and Michael Palkovic, DIRECTV's Executive Vice President, Operations. He informed the two that Tribune would be sending DIRECTV a new offer within 24 hours. He also assured them that, as Tribune's CEO, he and Tribune's executive management team—and not Tribune's creditors—would make the decisions regarding carriage.

22. That same day, DIRECTV's Mr. Chang spoke with Edgar Lee of Oaktree, who also stated that Mr. Hartenstein and Tribune's executive management would make the decisions regarding carriage.

23. The following day, March 28, Tribune's Mr. Hartenstein called DIRECTV's Mr. Palkovic to ask whom Tribune's Mr. Larsen should call to discuss the negotiations. Mr. Palkovic responded that he should call Mr. Chang.

24. Tribune's Mr. Larsen then e-mailed DIRECTV's Mr. Chang and left him a voicemail message. Mr. Chang promptly returned his call, at which time Mr. Larsen requested a meeting in New York the next day to discuss a forthcoming offer. Mr. Chang agreed to the meeting, but suggested that it would be more productive if he could see Tribune's proposal in advance of the meeting. Mr. Larsen agreed.

25. Later that evening, Tribune's Mr. Larsen sent Tribune's counterproposal to the DIRECTV team. That offer would roughly triple the total compensation DIRECTV now pays Tribune under the Carriage Agreement. *See Exhibit 2.*

26. The following day—Thursday, March 29, only two days prior to expiration—DIRECTV's Mr. Chang and Mr. Hartman met in DIRECTV's New York office with Tribune's Mr. Larsen and Mr. Marengi. That meeting commenced at

roughly 12:30PM EDT. Mr. Chang suggested that DIRECTV might be able to improve its previous offer slightly but that its room to negotiate was limited. He outlined a general range of total compensation within which, in his view, a deal was possible. He suggested that, if Tribune were unable to make a deal within that general range, DIRECTV would be unable to renew the agreement.

27. In response, Tribune's Mr. Larsen requested an economic counteroffer, as Tribune had made the prior offer. Messrs. Chang and Hartman presented the Tribune team with a handwritten counteroffer, and, given the pending deadline, requested that Tribune respond by 3:00PM EDT. *See Exhibit 3.* Messrs. Larsen and Marenghi responded that they would so respond.

28. During the course of this conversation, Tribune's Mr. Larsen asked if the DIRECTV representatives were authorized to make a deal, as he represented that he was so authorized.

29. Tribune's Messrs. Larsen and Marenghi left DIRECTV's offices. At roughly 3:00PM EDT, Mr. Chang received an e-mail from Tribune's Mr. Marenghi, stating that Tribune's representatives would require an additional 15 minutes to respond, as they were on the telephone with Mr. Hartenstein. *See Exhibit 2.*

30. Tribune's Messrs. Larsen and Marenghi telephoned DIRECTV's Mr. Chang roughly fifteen minutes later. They verbally described a counteroffer. During the conversation, they repeated several times that they had "heard" DIRECTV's concerns and had thus made an offer within the general range Mr. Chang had earlier described (a range, they added, that was consistent with Tribune's prior agreements with other

distributors), and had dropped the principal remaining demands to which DIRECTV had objected. Mr. Chang agreed with this assessment.

31. Two hours later, at roughly 5:30PM EDT, DIRECTV's Messrs. Chang and Hartman telephoned Tribune's Messrs. Larsen and Marengi. They made a verbal counteroffer that differed slightly from the offer proposed by Tribune.

32. At roughly 7:30PM EDT, Tribune's Mr. Larsen telephoned DIRECTV's Mr. Chang. He stated that Tribune might want to "move some numbers around a little." but that they would find a way to make the economics work. Tribune also wanted to further time to examine issues related to a "most favored nation" ("MFN") provision. In ending the conversation Mr. Chang requested that Mr. Larsen finish the finer points the next morning with Mr. Hartman as Mr. Chang would be travelling. Mr. Larsen agreed.

33. From this, DIRECTV's Messrs. Chang and Hartman understood that the parties had reached an agreement in principle, including the critical issue of compensation for carriage, and that only subsidiary issues remained to be resolved.

34. The next morning—Friday, March 30, only one day prior to expiration—DIRECTV's Mr. Hartman and Tribune's Mr. Larsen exchanged e-mails discussing logistics on bringing the deal to closure. DIRECTV sent Tribune a written proposal memorializing the agreements from the prior day. *See Exhibit 4.*

35. Later that afternoon, however, Tribune's Mr. Hartenstein called DIRECTV's Mr. White and rescinded the agreement in principle that DIRECTV and Tribune had reached the previous evening.

36. That evening, DIRECTV's Mr. Chang emailed and telephoned Tribune's Mr. Larsen to discuss the apparent disconnect between their agreement in principle and

the conversation between Messrs. White and Mr. Hartenstein. *See* Exhibit 5. Mr. Larsen agreed that the two conversations were inconsistent. Mr. Chang asked what had changed since the previous evening. Mr. Larsen replied that “his constituents” had overruled Tribune’s management. Mr. Chang asked if, by “constituents” Mr. Larsen meant Oaktree and Tribune’s other hedge fund and investment bank creditors. Mr. Larsen did not answer the question directly, but intimated that Mr. Chang’s supposition was correct. Mr. Chang then asked whether Mr. Hartenstein had supported the agreement in principle, and Mr. Larsen indicated that he had.

37. The following day—Saturday, March 31, 2012, the date the Carriage Agreement was due to expire—DIRECTV’s Mr. Hartman sent Tribune’s Mr. Larsen an e-mail accepting Tribune’s offer of Thursday, March 29 and seeking to memorialize the agreement in principle the parties had reached. *See* Exhibit 6. Mr. Larsen immediately responded by e-mail, claiming that DIRECTV was trying to “accept an offer Tribune never made.” Tribune’s “current offer to DirecTV,” Mr. Larsen contended, was “the offer that we made on [Wednesday] March 28.” *Id.*

38. Later that day, DIRECTV’s Mr. Chang spoke with Oaktree’s Mr. Lee. Mr. Lee confirmed to Mr. Chang that, the day before (*i.e.*, after the parties had reached the agreement in principle), the creditors informed Tribune’s management that they would not support the agreement in principle. He continued that, despite the specific representations that both he himself and Tribune management had made to DIRECTV, Tribune management was not authorized to reach an agreement without the creditors’ approval.

39. The parties are now at an impasse. The Carriage Agreement has expired, and Tribune has refused to extend it in order to continue negotiations. Instead, Tribune has instructed DIRECTV to cease carriage of the broadcast stations in their respective local markets. *See* Exhibits 6-7. Accordingly, DIRECTV has been forced to cease such carriage, denying over five million subscribers access to the programming of Tribune's stations.

COUNT I

FAILURE TO DESIGNATE AN AUTHORIZED REPRESENTATIVE

40. DIRECTV incorporates by reference paragraphs 1-39 as though fully stated herein.

41. As demonstrated above, Tribune is a television broadcast station, DIRECTV is an MVPD, and both are negotiating entities.

42. Under the Act, 47 U.S.C. § 325(b)(3)(C)(ii), and the Commission's rules, 47 C.F.R. § 76.65, a television broadcast station is required to negotiate retransmission consent in good faith with MVPDs.

43. The Commission has set forth a series of practices that are *per se* violations of the requirement to negotiate in good faith. 47 C.F.R. § 76.65(b)(1). One of these is the "[r]efusal by a Negotiating Entity to designate a representative with authority to make binding representations on retransmission consent." 47 C.F.R. § 76.65(b)(1)(ii).

44. As described above, both Tribune and its creditors specifically represented to DIRECTV that Tribune's management, including Messrs. Hartenstein and Larsen, were authorized to negotiate the renewal of the Carriage Agreement. In reliance on these

representations, DIRECTV negotiated and reached an agreement in principle with Tribune.

45. Only after reaching that agreement in principle did DIRECTV learn that Tribune's management was *not* authorized to renew the Carriage Agreement without the approval of Tribune's hedge fund and investment bank creditors.

46. For these reasons, the Commission should conclude that Tribune has failed to negotiate in good faith by failing to designate an empowered negotiating representative, in violation of the Communications Act and the Commission's rules. 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. § 76.65.

COUNT II

UNREASONABLE DELAY IN NEGOTIATIONS

47. DIRECTV incorporates by reference paragraphs 1-46 as though fully stated herein.

48. Another *per se* violation of good faith negotiation set forth by the Commission is the "[r]efusal by a Negotiating Entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations." 47 C.F.R. § 76.65(b)(1)(iii).

49. As demonstrated above, Tribune has purported to negotiate with DIRECTV for months with a team that was not in fact authorized to conduct such negotiations. Moreover, to the extent Tribune informed DIRECTV of these circumstances at all, it did so only on the day prior to the Carriage Agreement's expiration.

50. In doing so, Tribune essentially abandoned the prior two days of negotiations, knowing that the deadline was fast approaching. This is impossible to describe other than as “acting in a manner that unreasonably delays retransmission consent negotiations.”

51. For these reasons, the Commission should conclude that Tribune has failed to negotiate in good faith by refusing to meet and causing delay, in violation of the Communications Act and the Commission’s rules. 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. § 76.65.

COUNT III

TOTALITY OF THE CIRCUMSTANCES

52. DIRECTV incorporates by reference paragraphs 1-51 as though fully stated herein.

53. In addition to the *per se* violations of the requirement to negotiate in good faith, the Commission can also find, “based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station . . . breached its duty to negotiate in good faith.” 47 C.F.R. § 76.65(b)(2). Under this standard, “an MVPD may present facts to the Commission which, even though they do not allege a violation of the objective standards, given the totality of the circumstances reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties and thus constitute a failure to negotiate in good faith.” *Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues*, 15 FCC Rcd. 5445, ¶ 32 (2000). Such conduct includes actions that are “sufficiently outrageous” so as to violate the good faith negotiation requirement. *Id.*

54. The Commission should consider violations of the Communications Act to be *per se* “outrageous” conduct for purposes of the good faith negotiation rules.

55. Here, substantial questions exist as to whether Tribune has transferred control of its broadcast licenses without obtaining prior Commission authorization, in violation of the Communications Act. Section 310(d) of that Act prohibits broadcast licensees from transferring control of their licenses without authorization from the Commission. 47 U.S.C. § 310(d). In examining control of a broadcast license, the Commission typically focuses on the ability to control finances, personnel and programming, which it has described as “the major concerns of station operation and decision making.” *Stereo Broadcasters*, 87 F.C.C. 2d 87, ¶ 29 (1981).

56. Tribune has sought Commission approval of the transfers of its broadcast licenses resulting from its bankruptcy reorganization. See Public Notice, 25 FCC Rcd. 4928 (Med. Bur. 2010) (setting comment dates for Tribune’s application). In doing so, Tribune stated that “it is anticipated that three of Tribune’s creditors—JPMorgan Chase Bank, N.A., Angelo, Gordon & Co. L.P., and Oaktree Tribune, L.P.—each will have an attributable ownership interest in Reorganized Tribune, either directly or through one or more affiliates.” App. of WGN Continental Broadcast Company, Debtor-in-Possession, MB Docket No. 10-104, at 1 (filed Apr. 28, 2010). Under Tribune’s proposed reorganization plan, those three creditors collectively would control thirty percent of the voting and equity interests of the “reorganized” Tribune, while the rest of the interests would be widely held among Tribune’s other creditors. *Id.* at 14-16; see also Amended App. of WGN Continental Broadcast Company, Debtor-in-Possession, MB Docket No. 10-104, at 14-16 (June 25, 2010) (specifying the same percentages).

57. The Commission has not yet granted Tribune's application. Indeed, consideration of the application appears to be on hold while the parties attempt to modify their reorganization in light of the bankruptcy court's concerns with the original proposal. See Letter from Barbara Kreisman to John Feore, Jr., MB Docket No. 10-104 (Oct. 12, 2011) (stopping the informal "shot clock" on Tribune's application); Letter from John Feore to Marlene Dortch, MB Docket No. 10-104 (filed Nov. 30, 2011) (describing bankruptcy court's failure to approve original plan); Letter from John Feore to Marlene Dortch, MB Docket No. 10-104 (filed Jan 26, 2012) (stating that Tribune intends to file an amendment to its pending transfer-of-control application); Notice of Filing of Third Amended Joint Plan of Reorganization, Case No. 08-13141 (KJC) (Bankr. D. Del., filed Mar. 16, 2012) (filing new plan of reorganization with the bankruptcy court). Yet Tribune appears to have already delegated its retransmission consent authority to these creditors—a right that Congress granted to broadcast licensees alone. If so, Tribune would have, without authorization, *already* granted its creditors extraordinary control over station finances, which the creditors can then parlay into control of other major aspects of station operations.

58. For these reasons, the Commission should conclude that, under the totality of the circumstances, Tribune has failed to negotiate in good faith by transferring control of its broadcast licenses without authorization, in violation of the Act and the Commission's rules. 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. § 76.65.

REQUEST FOR RELIEF

For the foregoing reasons, DIRECTV asks the Commission to issue an order granting the following relief:

- (1) Declaring that Tribune has failed to negotiate in good faith under the Act and the Commission's rules;
- (2) Requiring Tribune to immediately negotiate in good faith, including appointment of a negotiating team with authority to reach agreement;
- (3) Requiring Tribune to grant DIRECTV an extension of the expired Carriage Agreement of no less than one month to enable such negotiations to take place and an investigation into the locus of control over Tribune to be conducted;
- (4) Imposing forfeitures on Tribune pursuant to Section 1.80 of the Commission's rules, as the Commission deems appropriate; and
- (5) Awarding DIRECTV other and further relief that the Commission deems just and proper.

REQUEST FOR EXPEDITED TREATMENT

DIRECTV's Carriage Agreement with Tribune expired on March 31, 2012. Due to Tribune's failure to negotiate in good faith, millions of DIRECTV subscribers have lost access to Tribune's broadcast programming. In order to minimize the consequences of Tribune's illegal conduct, DIRECTV respectfully requests that the Commission act on this complaint with utmost expedition. In particular, DIRECTV asks the Commission to place this complaint on public notice immediately and to greatly expedite the comment period permitted under its procedural rules, 47 C.F.R. §§ 76.7(b)(2)(i) and (c)(3).

Respectfully submitted,

DIRECTV, LLC

By:



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Counsel for DIRECTV, LLC

April 2, 2012

VERIFICATION

I, Derek Chang, do hereby declare and state under penalty of perjury as follows:

1. I am Executive Vice President, Content Strategy and Development for DIRECTV, LLC. My business address is 2230 E. Imperial Highway, El Segundo, CA 90245.
2. I have read the foregoing Complaint. To the best of my personal knowledge, information, and belief formed after reasonable inquiry, the statements made in this Complaint (other than those of which official notice can be taken) are well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. This Complaint is not interposed for any improper purpose.



April 2, 2012

Derek Chang

DECLARATION

I, Derek Chang, do hereby declare and state under penalty of perjury as follows:

1. I am Executive Vice President, Content Strategy and Development for DIRECTV, LLC. My business address is 2230 E. Imperial Highway, El Segundo, CA 90245.
2. I have primary responsibility for, and personal knowledge of, the negotiations with Tribune described in the foregoing Complaint for Failure to Negotiate in Good Faith.
3. DIRECTV and Tribune are parties to an agreement governing DIRECTV's carriage of Tribune's 23 television broadcast stations in their respective local markets (the "Carriage Agreement"). That agreement expired on March 31, 2012.
4. DIRECTV and Tribune had discussed renewal of the Carriage Agreement off and on for nearly a year. They had negotiated for several months in earnest. In these negotiations, Tribune had insisted on fees totaling more than three times what DIRECTV now pays under the Carriage Agreement.
5. On March 19, 2012, DIRECTV's Chairman and CEO Michael White had dinner with Tribune's President and CEO Eddy Hartenstein at which they discussed renewal of the Carriage Agreement. I understand that Mr. Hartenstein told Mr. White that he was worried about the timing of the soon-to-expire Carriage Agreement, and insisted that the parties get "all the right people in the room to negotiate" and finalize an agreement. I further understand that he specifically suggested that Nils Larsen, President & CEO of Tribune Broadcasting, was such a person. He then suggested that Tribune's negotiating team come to Los Angeles to negotiate in person.
6. On March 22, 2012, the proposed meeting took place. Present on behalf of DIRECTV were Dan Hartman, Linda Burakoff, and me. Present on behalf of Tribune were Nils Larsen, Julio Marengi, and Kevin Connor. Also present was Lindsay Gardner, who was identified as a consultant to both Tribune and to a fund affiliated with its creditor, Oaktree.
7. On March 23, Tribune sent DIRECTV a carriage proposal. DIRECTV responded with a counteroffer on March 25.
8. The next day, without responding to DIRECTV's offer, Tribune issued a press release warning DIRECTV subscribers that they were in danger of losing Tribune's service.

9. The following day, March 27, Mr. Hartenstein spoke with Larry Hunter and Michael Palkovic. I understand that he informed the two that Tribune would be sending DIRECTV a new offer within 24 hours. He also assured them that, as Tribune's CEO, he and Tribune's executive management team—and not Tribune's creditors—would make the decisions regarding carriage.
10. That same day, I spoke with Edgar Lee of Oaktree, who also stated that Mr. Hartenstein and Tribune's executive management would make the decisions regarding carriage.
11. The following day, March 28, Mr. Hartenstein called Mr. Palkovic to ask whom Mr. Larsen should call to discuss the negotiations. Mr. Palkovic responded that he should call me.
12. Mr. Larsen then e-mailed me and left me a voicemail message. I promptly returned his call, at which time Mr. Larsen requested a meeting in New York the next day to discuss a forthcoming offer. I agreed to the meeting, but suggested that it would be more productive if I could see Tribune's proposal in advance of the meeting. Mr. Larsen agreed.
13. Later that evening, Mr. Larsen sent Tribune's counterproposal to the DIRECTV team. That offer would roughly triple the total compensation DIRECTV now pays Tribune under the Carriage Agreement.
14. The following day—Thursday March 29, only two days prior to expiration—Mr. Hartman and I met in DIRECTV's New York office with Mr. Larsen and Mr. Marengi. That meeting commenced at roughly 12:30PM EDT. I suggested that DIRECTV might be able to improve its previous offer slightly but that our room to negotiate was limited. I outlined a general range of total compensation within which, in his view, a deal was possible. I suggested that, if Tribune were unable to make a deal within that general range, DIRECTV would be unable to renew the agreement.
15. In response, Mr. Larsen requested an economic counteroffer, as Tribune had made the prior offer. Mr. Hartman and I presented the Tribune team with a handwritten counteroffer, and, given the pending deadline, requested that Tribune respond by 3:00PM EDT. Messrs. Larsen and Marengi responded that they would so respond.
16. During the course of this conversation, Mr. Larsen asked if the DIRECTV representatives were authorized to make a deal, as he represented that he was so authorized.
17. Messrs. Larsen and Marengi left DIRECTV's offices. At roughly 3:00PM EDT, I received an e-mail from Mr. Marengi, stating that Tribune's representatives

would require an additional 15 minutes to respond, as they were on the telephone with Mr. Hartenstein.

18. Messrs. Larsen and Marengi telephoned me roughly fifteen minutes later. They verbally described a counteroffer. During the conversation, they repeated several times that they had “heard” DIRECTV’s concerns and had thus made an offer within the general range I had earlier described (a range, they added, that was consistent with Tribune’s prior agreements with other distributors), and had dropped the principal remaining demands to which DIRECTV had objected. I agreed with this assessment.
19. Two hours later, at roughly 5:30PM EDT, Mr. Hartman and I telephoned Messrs. Larsen and Marengi. We made a verbal counteroffer that differed slightly from the offer proposed by Tribune.
20. At roughly 7:30PM EDT, Mr. Larsen telephoned me. He stated that Tribune might want to “move some numbers around a little,” but that they would find a way to make the economics work. Tribune also wanted further time to examine issues related to a “most favored nation” (“MFN”) provision. In ending the conversation I requested that Mr. Larsen finish the finer points the next morning with Mr. Hartman as I would be travelling. Mr. Larsen agreed.
21. From this, Mr. Hartman and I understood that the parties had reached an agreement in principle, including the critical issue of compensation for carriage, and that only subsidiary issues remained to be resolved.
22. The next morning—Friday March 30, only one day prior to expiration—Mr. Hartman and Mr. Larsen exchanged e-mails discussing logistics on bringing the deal to closure. DIRECTV sent Tribune a written proposal memorializing the agreements from the prior day.
23. Later that afternoon, however, Mr. Hartenstein called Mr. White and rescinded the agreement in principle that DIRECTV and Tribune had reached the previous evening.
24. That evening, I emailed and telephoned Mr. Larsen to discuss the apparent disconnect between their agreement in principle and the conversation between Messrs. White and Mr. Hartenstein. Mr. Larsen agreed that the two conversations were inconsistent. I asked what had changed since the previous evening. Mr. Larsen replied that “his constituents” had overruled Tribune’s management. I asked if, by “constituents” Mr. Larsen meant Oaktree and Tribune’s other hedge fund and investment bank creditors. Mr. Larsen did not answer the question directly, but intimated that my supposition was correct. I then asked whether Mr. Hartenstein had supported the agreement in principle, and Mr. Larsen indicated that he had.

25. The following day—Saturday March 31, 2012, the date the Carriage Agreement was due to expire—Mr. Hartman sent Mr. Larsen an e-mail accepting Tribune’s offer of Thursday March 29 and seeking to memorialize the agreement in principle the parties had reached. Mr. Larsen immediately responded by e-mail, claiming that DIRECTV was trying to “accept an offer Tribune never made.” Tribune’s “current offer to DirecTV,” Mr. Larsen contended, was “the offer that we made on [Wednesday] March 28.”
26. Later that day, I spoke with Oaktree’s Mr. Lee. Mr. Lee confirmed to me that, the day before (*i.e.*, after the parties had reached the agreement in principle), the creditors informed Tribune’s management that they would not support the agreement in principle. He continued that, despite the specific representations that both he himself and Tribune management had made to DIRECTV, Tribune management was not authorized to reach an agreement without the creditors’ approval.
27. The parties are now at an impasse. The Carriage Agreement has expired, and Tribune has refused to extend it in order to continue negotiations. Instead, Tribune has instructed DIRECTV to cease carriage of the broadcast stations in their respective local markets. Accordingly, DIRECTV has been forced to cease such carriage, denying over five million subscribers access to the programming of Tribune’s stations.



April 2, 2012

Derek Chang

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of April, 2012, a copy of the foregoing
Complaint was served by overnight mail upon:

Tribune Company, Debtor-in-Possession
435 N. Michigan Avenue
Chicago, Illinois 60611
Attention: Eddy Hartenstein

/s/ _____
Laura Merkey

Exhibit 1

Exhibit 1
List of Tribune Stations

Local Market	Station
Chicago IL	WGN
Dallas- Fort Worth TX	KDAF
Denver CO	KWGN
Grand Rapids-Kalamazoo MI	WXMI
Harrisburg-Lancaster PA	WPMT
Hartford-New Haven CT	WTIC
Hartford-New Haven CT	WCCT
Houston TX	KIAH
Indianapolis IN	WXIN
Indianapolis IN	WTTV
Los Angeles CA	KTLA
Miami-Fort Lauderdale FL	WSFL
New Orleans LA	WGNO
New Orleans LA	WNOL
New York NY	WPIX
Philadelphia PA	WPHL
Portland OR	KRCW
Sacramento-Stockton CA	KTXL
San Diego CA	KSWB
Seattle-Tacoma WA	KCPQ
Seattle-Tacoma WA	KZJO
St Louis MO	KPLR
Washington DC-Hagerstown MD	WDCW

Exhibit 2

Exhibit 2
Email Exchange Between Tribune and DIRECTV
March 28-29

----- Original Message -----

From: Chang, Derek
To: Marenghi, Julio <jumarenghi@tribune.com>
Sent: Thu Mar 29 15:01:59 2012
Subject: Re:

We'll call you in 15 minutes.

On 3/29/12 12:09 PM, "Marenghi, Julio" <jumarenghi@tribune.com> wrote:

>Can we call you now? Give us a number where we can call you.

>

>----- Original Message -----

>From: Chang, Derek [<mailto:DChang@DIRECTV.com>]
>Sent: Thursday, March 29, 2012 02:04 PM
>To: Marenghi, Julio; Hartman, Daniel M <DMHartman@directv.com>
>Subject: Re:

>

>Can you give us an indication now. Obviously if you are leaning towards

>"no" then 15 minutes isn't going to make a difference.

>

>From: "Marenghi, Julio"

><jumarenghi@tribune.com<<mailto:jumarenghi@tribune.com>>>

>Date: Thu, 29 Mar 2012 13:01:57 -0600

>To: DIRECTV <dchang@directv.com<<mailto:dchang@directv.com>>>, Dan

>Hartman <DMHartman@directv.com<<mailto:DMHartman@directv.com>>>

>Subject: Re:

>

>We are on with Eddy now and wrapping in a few. Can we buy 15 minutes?

>

>Jules

>

>From: Marenghi, Julio

>Sent: Thursday, March 29, 2012 10:49 AM

>To: Chang, Derek <DChang@DIRECTV.com<<mailto:DChang@DIRECTV.com>>>;

>Hartman, Daniel M

><DMHartman@directv.com<<mailto:DMHartman@directv.com>>>

>Subject: RE:

>

>We're here and heading over shortly. By 12:30p

>

>From: Chang, Derek [<mailto:DChang@DIRECTV.com>]

>Sent: Thursday, March 29, 2012 9:02 AM

>To: Marenghi, Julio; Larsen, Nils; Hartman, Daniel M; Burakoff, Linda
K

>Subject: Re: Re:

>

>Noon is fine

>

>

>From: Marenghi, Julio

><jumarenghi@tribune.com<<mailto:jumarenghi@tribune.com>>>
>To: Chang, Derek; Larsen, Nils
><nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>>; Hartman, Daniel M;
>Burakoff, Linda K
>Sent: Thu Mar 29 06:53:22 2012
>Subject: RE: Re:
>Derek/Dan-
>
>Nils was delayed at bit but is now here in midtown at roughly 11:30a.
>Let us know what time after 12p works for you both and we will plan
>accordingly.
>
>Julio
>
>From: Chang, Derek [<mailto:DChang@DIRECTV.com>]
>Sent: Thursday, March 29, 2012 6:47 AM
>To: Larsen, Nils; Hartman, Daniel M; Burakoff, Linda K
>Cc: Marenghi, Julio
>Subject: Re:
>
>Nils,
>May just be my blackberry but not sure there was an attachment.
>
>We are at 1 rockefeller center. Between 48th and 49th. 7th floor.
>
>Safe travels.
>Derek
>
>
>From: Larsen, Nils <nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>>
>To: Chang, Derek; Hartman, Daniel M; Burakoff, Linda K
>Cc: Marenghi, Julio
><jumarenghi@tribune.com<<mailto:jumarenghi@tribune.com>>>
>Sent: Wed Mar 28 22:13:10 2012
>Subject:
>
>Derek:
>
>Please find attached our response to your proposal from Sunday March
>25th.
>
>In our response we have attempted to take to heart your expressed
>desire that this deal not create an off-market result for DirecTV.
>Accordingly, we have made a proposal that addresses the retransmission
>license fee MFN, the monthly retransmission fees and our overall
>advertising relationship. These three components operate together. We
>believe this proposal provides you with significant comfort on your
>concerns and provides us similar consistency in the overall
>relationship between the two companies.
>
>I am on a 7a flight tomorrow morning which lands in NYC at 10a.
>Accordingly, Julio and I should be able to be at your offices by
>11:30a
>if everything is on time. If you could please provide the right
>address
>I would appreciate it.
>

>I look forward to seeing you tomorrow.
>
>Thanks.
>
>Nils

Exhibit 3

Exhibit 3
DIRECTV Handwritten Counteroffer
March 29

BIG 4

LPX

OTHER CW

WUNA

KOLA

MY NET

WGBTV

WRAL

YR 1

SAME AS PRIOR DISC

YR 2

"

YR 3

"

MATERIAL REDACTED

YR 4

"

YR 5

Exhibit 4

Exhibit 4
Email Exchange Between DIRECTV and Tribune
March 30

From: "Burakoff, Linda K"
<LKBurakoff@directv.com<<mailto:LKBurakoff@directv.com>>>
Date: March 30, 2012 10:22:08 AM CDT
To: "Larsen, Nils" <nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>>, "Marenghi, Julio" <jumarenghi@tribune.com<<mailto:jumarenghi@tribune.com>>>
Cc: "Hartman, Daniel M" <DMHartman@directv.com<<mailto:DMHartman@directv.com>>>
Subject: RE: Tribune Newspaper properties

Attached is our revised draft, redlined from your 3/28 draft.

Thanks.

Linda Burakoff
lkburakoff@directv.com<<mailto:lkburakoff@directv.com>>
(XXX) XXX-XXXX phone
(XXX) XXX-XXXX fax

-----Original Message-----
From: Larsen, Nils [<mailto:nlarsen@tribune.com>]
Sent: Friday, March 30, 2012 7:58 AM
To: Hartman, Daniel M
Cc: Marenghi, Julio; Burakoff, Linda K
Subject: RE: Tribune Newspaper properties

Great, we will respond versus your turn.

Nils

-----Original Message-----
From: Hartman, Daniel M [<mailto:DMHartman@directv.com>]
Sent: Friday, March 30, 2012 9:57 AM
To: Larsen, Nils
Cc: Marenghi, Julio; Burakoff, Linda K
Subject: Re: Tribune Newspaper properties

We can have you something very shortly. Just reviewed it with Linda

Sent from my iPhone

On Mar 30, 2012, at 10:50 AM, "Larsen, Nils" <nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>> wrote:

Dan:

Do you have a sense of the timing on the redraft?

We are working on the same and I want to make sure that we not creating an inefficiency.

If you are close we will react to your version rather than commenting on our own version.

Thanks.

Nils

-----Original Message-----

From: Hartman, Daniel M [\[mailto:DMHartman@directv.com\]](mailto:DMHartman@directv.com)

Sent: Friday, March 30, 2012 9:41 AM

To: Larsen, Nils

Cc: Marenghi, Julio; Burakoff, Linda K

Subject: Re: Tribune Newspaper properties

OK. We'll work on getting you a redraft that has language we'll propose on other issues we've been discussing **[MATERIAL REDACTED]**

Sent from my iPhone

On Mar 30, 2012, at 9:16 AM, "Larsen, Nils"

nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>> wrote:

Dan:

Thanks for the note.

As I discussed with Derek last night we are assessing the retrans MFN request as it presents substantial complexity.

We will be reaching out.

Nils

-----Original Message-----

From: Hartman, Daniel M [\[mailto:DMHartman@directv.com\]](mailto:DMHartman@directv.com)

Sent: Friday, March 30, 2012 12:19 AM

To: Marenghi, Julio

Cc: Larsen, Nils; Burakoff, Linda K

Subject: Re: Tribune Newspaper properties

Guys I'm available the next two days to try to close this deal. I'm on a plane from 1:00 to 3:00 EST Friday but other than that I'm available. Linda is away for the weekend but has access to the term sheet. My cell is XXX-XXX-XXXX.

Sent from my iPhone

On Mar 29, 2012, at 9:18 AM, "Marenghi, Julio"

jumarenghi@tribune.com<<mailto:jumarenghi@tribune.com>>> wrote:

Dan-

Here is a list of our core newspaper properties. Attached, I've also include our Portfolio coverage by market which includes other print publications.

LA Times
Chicago Tribune / Chicago RedEye
South Florida Sun-Sentinel
Orlando Sentinel
Allentown Morning Call
Baltimore Sun
Hartford Courant
Newport News Daily Press

Here is a link to our T365 website where you can find media kits and market profiles for each market.

<http://trb365.com/>

<TRIBUNE365_Portfolio_Map.pdf>

Exhibit 5

Exhibit 5
Email from DIRECTV to Tribune
March 30

----- Original Message -----

From: Chang, Derek

To: 'nlarsen@tribune.com' <nlarsen@tribune.com>

Sent: Fri Mar 30 17:29:23 2012

Subject: Please call

Nils,

I just spoke to Dan who relayed a conversation that Eddy had with Mike which sounds inconsistent with the discussion you and I had last night. Please call me on my cell XXX-XXX-XXXX.

Thanks.

Derek

Exhibit 6

Exhibit 6
Email Exchange Between DIRECTV and Tribune
March 31

From: "Larsen, Nils" <nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>>
Date: March 31, 2012 4:58:58 PM CDT
To: "Hartman, Daniel M"
<DMHartman@directv.com<<mailto:DMHartman@directv.com>>>
Cc: "Marenghi, Julio"
<jumarenghi@tribune.com<<mailto:jumarenghi@tribune.com>>>, "Chang, Derek"
<DChang@DIRECTV.com<<mailto:DChang@DIRECTV.com>>>
Subject: RE: Acceptance of March 29 Offer

Dan:

As you know, only with an agreement can DirectTV continue to carry Tribune's signals. I cannot advise you further as to what you should do. This is your decision.

If you would like to further discuss the proposed terms referenced below and attached to my earlier e-mail please feel free to contact me. I am available at your convenience.

Nils

-----Original Message-----

From: Hartman, Daniel M [<mailto:DMHartman@directv.com>]
Sent: Saturday, March 31, 2012 3:54 PM
To: Larsen, Nils
Cc: Marenghi, Julio; Chang, Derek
Subject: Re: Acceptance of March 29 Offer

Nils: I take it from your e mail that you, on behalf of Tribune, are directing DIRECTV to cease transmitting the Tribune stations at midnight tonight. If this is not correct, please let me know immediately, otherwise we will prepare to take down the stations per your direction. If you are not the person I need to receive this direction from, please let me know who I would expect to hear from.

Thank you.

Dan

On Mar 31, 2012, at 11:19 AM, "Larsen, Nils"
<nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>> wrote:

Dear Dan:

I find your email from this morning to be puzzling. You are purporting to accept an offer Tribune never made. Our current offer to DirectTV is the offer that we made on March 28. For your convenience, I am attaching a copy of that offer, which we continue to remain willing to discuss with you.

As you know, federal law requires that DirectTV have our express written consent to retransmit our stations. Purporting to accept an offer that

Tribune never made does not provide DirectTV with the necessary consent. Tribune will not hesitate to enforce all rights available to it in federal court and at the FCC if DirectTV takes any unlawful action with respect to any of our stations.

Finally, it is our understanding that DirectTV has released a statement claiming that it has accepted Tribune's financial terms for carriage of our broadcast stations. If this press release indicates acceptance of our current March 28th offer, we will send you a signature page for that document to make it official. Otherwise, we demand that DirectTV immediately withdraw this false and misleading statement and that it cease and desist from making any similar false claims. Such actions are not helpful to this process.

My team and I remain available to negotiate an agreement throughout the rest of the day, but we will not negotiate in public or through press releases.

Nils

From: Hartman, Daniel M
[DMHartman@directv.com<<mailto:DMHartman@directv.com>>]
Sent: Saturday, March 31, 2012 10:40 AM
To: Larsen, Nils; Marengi, Julio
Cc: Chang, Derek
Subject: Acceptance of March 29 Offer

March 31, 2012

Nils Larsen
President and CEO
Tribune Broadcasting
435 North Michigan Avenue
Chicago IL 60611

Julio Marengi
EVP & GM
WGN America
220 E 42nd Street
Suite 400
New York NY 10017

Dear Nils and Julio:

As you know, our agreement regarding carriage of the Tribune Broadcasting stations and WGN America expires tonight<x-apple-data-detectors://0> at midnight. In order to do what is best for our mutual subscribers and to ensure that there is no disruption of our carriage of the Tribune stations, DIRECTV hereby notifies you that we accept the rates for those stations offered by you to Derek Chang over the telephone at approximately 3:30 pm EST on Thursday, March 29th. Confirming those rates as follows:

[MATERIAL REDACTED]

We can conduct a separate negotiation for terms covering the WGN America service.

Sincerely,

Daniel Hartman
SVP, DIRECTV, Inc.

<Tribune_DirectTV Term Sheet (Tribune 3-28).docx>

Exhibit 7

Exhibit 7
Email From Tribune to DIRECTV
March 31/April 1

From: "Marenghi, Julio"
<jumarenghi@tribune.com<<mailto:jumarenghi@tribune.com>>>
Date: March 31, 2012 11:34:46 PM CDT
To: "Hartman, Daniel M"
<DMHartman@directv.com<<mailto:DMHartman@directv.com>>>
Cc: "Chang, Derek" <DChang@DIRECTV.com<<mailto:DChang@DIRECTV.com>>>, "Larsen, Nils" <nlarsen@tribune.com<<mailto:nlarsen@tribune.com>>>
Subject: Tribune Stations should be dropped

Dan-

This is to inform you that as of 12:15pm ET on Sunday April 1st the east coast Tribune stations are still being carried by DIRECTV and should have been taken down. This is a violation of federal law.

Please confirm that our stations will be dropped in each time zone this evening at midnight April 1, 2012. WGN America must be dropped by midnight Hawaii time.

Julio
(XXX) XXX-XXXX

Sent from my iPad