



3. AT&T is a national telecom company who, through its subsidiaries U-Verse and DirecTV, provides multichannel video programming distribution using satellite and wired telecommunications systems.

4. This case is a result of AT&T refusing to negotiate a contract with Circle City because the stations in question are now owned by a Black man, a Black man who has made a career out of advancing the cause of Blacks and other minorities in media ownership and leadership. AT&T only deals fairly with historically more established broadcasters (namely, white-owned) when negotiating carriage agreements. It insists on maintaining its decades-long policies and practices of discriminating against the minority broadcaster, the broadcaster that never had the chance to become one of the historically more established broadcasters and thus remains perpetually ineligible to do business with AT&T. The effect has been to exclude minority broadcasters and deny them a seat at the table of American media ownership and management.

5. Since September 19, 2019, Circle City has patiently attempted to negotiate an agreement with Defendant AT&T for AT&T to retransmit Circle City's television content to consumers in Indianapolis, Indiana and the surrounding area after Circle City purchased the stations from Nexstar Broadcasting, Inc. ("Nexstar"). AT&T had such an agreement with the seller, Nexstar; however, AT&T has refused to negotiate any retransmission agreement with Circle City, offering it **zero** for its content.

6. In an attempt to understand why AT&T was taking such a hard line against contracting with Circle City, McCoy contacted Randall Stephenson, the President and CEO of AT&T, via email on June 16, 2020 (attached as Exhibit A). On June 23, 2020, Mr. McCoy received a response from AT&T's executive vice president and Chief Content

Officer, Rob Thun (attached as Exhibit B). Therein, Mr. Thun stated that it is AT&T “policy to not pay license fees for standalone non-Big 4 broadcast stations” and further stated “it does not make sense for us ultimately to charge consumers for standalone non Big-4 stations.” This is a lie. AT&T did with Nexstar exactly what it told Mr. McCoy it had a policy against. Specifically, when Nexstar owned the stations, it did not own other stations in the Indianapolis market, meaning Nexstar’s stations were “standalone non-Big 4 broadcast stations.”

7. Under Nexstar’s ownership, AT&T paid Nexstar for the right to retransmit the stations’ signals, and passed on those charges to its customers in the Indianapolis area. Since Circle City acquired the stations, AT&T has terminated any payments to the stations, although it apparently continues to charge customers for this content that it is no longer delivering.

8. Upon information and belief, AT&T maintains an internal playbook designed to suppress minority-based content. Further, AT&T officials view Circle City’s acquisition of its two Indianapolis broadcast stations as “the first of its kind” and AT&T does not want to “open the floodgates to start paying people like this.”

9. It is these old and familiar practices in American business that, on their face (by AT&T’s practiced design), seem benign and business related, when the reality is AT&T’s policies and practices have created and sustained a systemic, decades-long racial barrier for minorities and their companies trying to find their rightful place in American television broadcasting. The perpetuation of these historical hurdles is one of the worst and most common results that can evolve from discrimination.

10. As detailed below, the content offered through the stations is the same or better under Circle City's ownership as it was under Nexstar. This leads to the inexorable conclusion that had all other things been the same except that Circle City were white-owned, AT&T would have agreed to terms the same as or similar to AT&T's terms with Nexstar, and would have done so long ago.

11. As it stands, AT&T has violated, and continues to violate, the civil rights of Circle City. Accordingly, Circle City sues for actual and exemplary damages, interest, reasonable attorneys' fees and costs resulting from the intentional misconduct exhibited by AT&T in its disingenuous "negotiations" with Circle City.

## **II. THE PARTIES**

12. Circle City is a Delaware limited liability company with its principal place of business in Indianapolis, Indiana.

13. AT&T is a New York company with its principal place of business located at One AT&T Way, Bedminster, New Jersey 07921-0752. It may be served through its Indiana registered agent for process by serving the complaint and summons on CT Corporation System, 150 West Market Street, Suite 800, Indianapolis, Indiana 46204.

## **III. JURISIDCTION AND VENUE**

14. This Court has subject matter jurisdiction over Circle City's claims under 42 U.S.C. §1981 pursuant to its federal question jurisdiction under 28 U.S.C. § 1331.

15. Venue is appropriate under 28 U.S.C. § 1391 as this is the judicial district in which a substantial part of the events and omissions giving rise to this claim occurred.

#### IV. FACTS

16. On September 19, 2019, Circle City purchased the Indianapolis-based television stations, WISH-TV and WNDY-TV, from Nexstar.

17. The very day Circle City purchased WISH-TV and WNDY-TV, AT&T halted all retransmission payments for those stations, after paying full market price to the prior owner of the stations for years. This refusal to pay Circle City is consistent with AT&T's stated position that it would not want to "open the floodgates" by paying for minority-owned broadcast channels and content, which is a position consistent with its internal playbook.

18. Through the fall of 2019, the transition in ownership, management and programming from Nexstar to Circle City was seamless. Circle City was providing, at all times, everything Nexstar offered as a broadcaster and a business partner, if not more. It was the same property. There was no reduction in the content and quality of television programming. In fact, there was only immediate improvement as Circle City added value to both stations, including but not limited to:

- **WISH-TV** produced more local news content than any station in the country, with over 75 hours per week, and is one of the highest rated news stations in the market.
- **WNDY-TV** (MyNet) - airs over 100 live local High School sporting events (newly added under Circle City's new management and ownership), as well as enhanced college and professional sporting events coverage.
- **WISH-TV** added the only Multi-Cultural Reporter in the state of Indiana dedicated solely to report on positive and impactful stories affecting the multicultural communities of the Indianapolis viewing area.
- **WISH-TV** added the only Medical Reporter in the State of Indiana to report on the important health issues affecting the Indianapolis viewing are.

19. Other than these improvements, the only meaningful change was the fact that the stations were now majority owned by an African American, Mr. McCoy. Instead of being recognized and celebrated as a great American accomplishment and advancement for minorities when Mr. McCoy purchased the stations, AT&T viewed it as a downgrade. AT&T refused to negotiate the retransmission contracts in good faith with the minority-owned Circle City.

20. During the transition subsequent to the sale, Mr. McCoy was able to secure long-term deals with other large distributors like Comcast, Charter and all other cable operators in the area. All but three of the distributors serving Indianapolis saw the value in the continued retransmission of the stations, and welcomed the opportunity to continue providing that programming to their viewers. The three that did not are DISH, AT&T d/b/a U-VERSE and DIRECTV.

21. Prior to Circle City's purchase, on information and belief, AT&T paid significant retransmission consent fees to the standalone affiliates WISH-TV, CW affiliate, and WNDY, MyNet's standalone affiliates owned by Nexstar in the Indianapolis-DMA. (Circle City does not have copies or access to AT&T's retransmission agreements with Nexstar, but can deduce from station financial information to which it does have access that payments were being received prior to Circle City's acquisition.)

22. When Mr. McCoy came on the scene, AT&T's fair treatment of the station stopped. AT&T's approach to Circle City reflected its bias against the race of Circle City's owner, Mr. McCoy. AT&T offered **zero** compared to the rates it paid the prior broadcaster, Nexstar.

23. AT&T's present behavior in Indianapolis presents the perpetuation of the systemic racial bias embodied in its playbook and is an existential threat to minority-owned media as it shuts minorities out of ownership and leadership opportunities in American media.

24. The effect of AT&T's behavior is pernicious. If a minority broadcaster desperate for carriage, accepts a retransmission consent offer of **zero**, such as the one being offered by AT&T to Circle City, the other MVPDs that had agreed to pay fair compensation the first go-around with Circle City will naturally revert to significantly lower offers when their current deals with Circle City expire. At that point, there will be a race to the bottom that ultimately puts Circle City out of business, and kills one of the best examples of Blacks' and other minorities' ability to succeed and lead in American media.

25. When a large MVPD is embroiled in a retransmission consent dispute with a non-minority broadcaster, the dispute almost always works itself out. But if a minority broadcaster, like Circle City, refuses to accept an offer of **zero** from a MVPD (AT&T), the stations will go dark and stay dark (which is currently the case with WISH TV-CW and WNDY-MyNet TV on the AT&T platform). This will force the minority owned broadcaster to sell to a non-minority broadcaster who will have immediate positive retransmission revenues with its higher paid fees. Allowing this would systemically render minority broadcasters obsolete, or simply hanging on with an unsustainable operation.

**V. CAUSE OF ACTION – VIOLATION OF  
CIVIL RIGHTS UNDER 42 U.S.C. § 1981**

26. Circle City incorporates herein by reference each and every allegation in the preceding paragraphs as though fully set forth herein.

27. AT&T has engaged in, and is engaging in, intentional race discrimination in contracting in violation of 42 U.S.C. § 1981. Section 1981 is a broad federal statute covering the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship. AT&T's intentional acts of discrimination, in violation of 42 U.S.C. § 1981, have had a negative impact on Circle City, for which it complains.

28. African Americans are a protected class under Section 1981. Circle City is a television broadcasting company, majority owned by an African American, DuJuan McCoy.

29. As stated herein, Circle City has engaged with AT&T for the several months since it purchased the Indianapolis stations in question, in a good faith attempt to enter a contract with AT&T.

30. Circle City initially believed it could negotiate with AT&T in a fair and equitable manner, as any broadcasting company should be able to do in America. However, Circle City learned through its interactions with AT&T and other means that AT&T has one set of policies for Black-owned broadcasters and a different set of policies for white-owned broadcasters.

31. AT&T has violated, and continues to violate, Circle City's civil rights in violation of the Civil Rights Act of 1866, 42 U.S.C. Sec. 1981 by preventing Circle City from exercising its right to make and enforce contracts as is enjoyed by white persons in America.

32. Accordingly, Circle City sues for retransmission fees at a fair market rate, other lost revenue, actual and punitive damages, interest, and reasonable attorneys' fees

and costs resulting from the intentional misconduct exhibited by AT&T in violation of Circle City's basic civil rights.

**JURY DEMAND**

33. Circle City demands a jury trial.

**PRAYER FOR RELIEF**

Plaintiff prays that:

- A. Plaintiff be granted judgment against Defendant for its damages, actual and exemplary;
- B. Plaintiff be granted judgment against Defendant for pre-judgment interest and post-judgment interest at the maximum legal rate;
- C. Plaintiff be granted judgment against Defendant for reasonable attorneys' fees and costs of court;
- D. Plaintiff be granted such other and further relief, special or general, legal or equitable, as Plaintiff may show that it is justly entitled to receive.

Dated August 10, 2020.

Respectfully submitted,

JONES, GILLASPIA & LOYD, L.L.P.

*/s/ Bruse Loyd*

Bruse Loyd

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**From:** [DuJuan McCoy](#)  
**To:** [rs2982@att.com](mailto:rs2982@att.com)  
**Cc:** [Bill Soards](#)  
**Bcc:** [Aaron Williams](#)  
**Subject:** Indianapolis, IN WISH TV, WNDY  
**Date:** Tuesday, June 16, 2020 3:45:48 PM

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Mr. Stephenson,

DuJuan McCoy here..African American, owner of two TV stations in Indianapolis. I read your statement on today's injustices and wanted to personally reach out to you to see if you will help me with my injustice with AT&T

I'm searching for equitable treatment from your company and have been trying since September 19,2019.

You paid a white owned company significant fees for the same or less programming on two tv stations WISH TV and WNDY TV

The day, I purchased the stations( 9/19/19) you took me to zero. Knowing that I need those fees to competitively operate stations.

From Sept - January, AT&T acted as if I they would allow me to negotiate a fair fee. So with that intention I, in good faith, let you air my product for free until January 31,2020 when I finally realized you never had intention on compensating me.

Both AT&T and Direct TV have now been dark on my two stations since this date!

My only option, if you can't help me,  
is to continue fighting for equal treatment and ask the courts to help ...which I am very reluctant to do in this state of our environment!

Will you help me ! Thanks

[https://about.att.com/newsroom/2020/mandate\\_for\\_equitable\\_justice.html](https://about.att.com/newsroom/2020/mandate_for_equitable_justice.html)

**DuJuan A. McCoy**  
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Sent from my iPhone

**From:** [THUN, ROB](#)  
**To:** [DuJuan McCoy](#)  
**Cc:** [DAI, HONGFENG](#)  
**Subject:** WISH and WNDY  
**Date:** Tuesday, June 23, 2020 2:09:22 PM

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Mr. McCoy,

I am responding to your June 16<sup>th</sup> email to Randall Stephenson. We appreciate your note, but strongly disagree with your characterization of our negotiations. We made it clear from the beginning of our discussions that, while AT&T would prefer to continue carriage of WISH and WNDY, it is our policy to not pay license fees for standalone non-Big 4 broadcast stations. We do see value to carrying WISH and WNDY, but it does not make sense for us ultimately to charge consumers for standalone non Big-4 stations that are available for free over the air and online.

We hope that you will re-engage with us on finding a mutually agreeable solution within those parameters. Please reach out to Julia Dai, copied here, if you would like to do so.

Regards,  
Rob Thun  
EVP, Chief Content Officer