

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

CIRCLE CITY BROADCASTING I, LLC)
AND NATIONAL ASSOCIATION OF)
BLACK OWNED BROADCASTERS,)

Plaintiffs,)

v.)

CIVIL ACTION NO. _____

DISH NETWORK, LLC,)

Defendant.)

PLAINTIFFS’ ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW, Circle City Broadcasting I, LLC (“Circle City”) and National Association of Black Owned Broadcasters (“NABOB”), (collectively known as Plaintiffs), and file this, their Original Complaint and Demand for Jury Trial, against Dish Network, LLC (“Dish” or “Defendant”), and would show the Court as follows:

I. INTRODUCTION

1. This case complains of racial discrimination in contracting by Defendant Dish against Plaintiff Circle City. It involves Dish’s refusal to contract in a non-discriminatory manner with Circle City in violation of 42 U.S.C. § 1981.

2. Circle City is a small, minority-owned and historically disadvantaged business providing local television broadcasting with television stations located in and serving Indianapolis, Indiana and the surrounding areas.

3. NABOB is a nonprofit corporation, incorporated in Washington, DC in 1978, and has standing to be a party to this case. NABOB was organized as a response to the abysmal underrepresentation of African Americans in the communications industry. Since its inception, NABOB has grown into a major trade association representing the interests of the African American owned commercial radio and television stations across the country. As the voice of the African American broadcast industry for the past 42 years, NABOB has been instrumental in shaping national government and industry policies to improve the opportunities for success in broadcasting for African Americans and other minorities.

4. Defendant Dish is a national telecom company that provides direct television broadcast satellite services.

5. This case results from Dish's refusal to negotiate a television retransmission contract in good faith with a minority owned business, Circle City,

6. As the evidence will demonstrate, Dish has a long history of discrimination against minority-owned businesses. The transaction precipitating this lawsuit presents that discriminatory behavior in stark relief. On information and belief, this is the first transaction of its kind in the history of broadcasting where a minority owned business has purchased similarly situated, highly-rated, television stations from a large white owned and controlled broadcaster, Nextstar Media Group, Inc. ("Nexstar"), a publically traded American telecommunications company and the seller of WISH TV-CW and WNDY-MyNet TV, and been subjected to the discriminatory behavior demonstrated by Dish. Circle City has been the trailblazer for African American owned and operated broadcasters by becoming the only African American owner of a major

news station in a major television market like Indianapolis, IN (whose market rank is 25th, qualifying it as major by the industry's standard reference, BIA). Dish, one of America's largest multi-channel video programming distributors ("MVPD"), through its "policies," has removed itself from contracting fairly with African American and other minority owned companies, and is systemically preventing like broadcasters and programmers to continue to grow their businesses.

7. The evidence will show that Dish insists on maintaining the industry's decades long policies and practices of discriminating against minority-owned broadcasters and historically disadvantaged business by, on information and belief, paying the non-minority broadcasters significant fees to rebroadcast their stations and channels while offering practically no fees to the historically disadvantaged broadcaster or programmer for the exact same or superior programming. Upon information and belief, there are extreme instances where Dish is not offering to carry minority channels at all, such as the case with Urban One. Dish is the only MVPD in America that has not and will not carry black focused channel Urban One, owned and operated by the largest black radio group in America. As detailed in the letter attached hereto as **Exhibit A**, Urban One has taken exception to Dish's mistreatment of minority broadcasters and programmers by expressing its views therein to the Federal Communications Commission ("FCC"). The president of Circle City, Mr. DuJuan McCoy, in a separate and independent matter, filed his own letter with the FCC, detailing the unlawful conduct his broadcasting companies have experienced at the hand of Dish. Please see **Exhibit B**, attached hereto and incorporated herein. Therein, he describes a federal lawsuit he had to file against Dish for refusing to pay his broadcasting company amounts it was due despite

already having been ordered by another federal court that it could not do what it was doing. This lawsuit, detailing Dish's conduct, speaks volumes about Dish's poor corporate character. The lawsuit was settled by Dish in full relief soon after it was filed. Please see **Exhibit C**, attached hereto and incorporated herein.

8. Dish's admitted policies discounting the contribution minorities can make in a market by refusing to contract with them on a fair and equal basis highlights a troubling continuation of stagnation in American media and discrimination against minority businesses.

9. By continuing to refuse to offer the same fair and equal contract opportunities to minority owned television broadcasters, as it does for broadcasting companies that are historically and exclusively owned and managed by whites, Dish violates 42 U.S.C. §1981, which provides that all persons in the United States shall have the same right to make and enforce contracts as is enjoyed by white persons. Section 1981 prohibits racial discrimination in contracting and was enacted to end the exact conduct exhibited by Dish.

10. The urgency is palpable. It is an opportunity to do the right thing, to advance, to change and discourage the acts of Dish and others like it.

11. The genesis of this case is a first of its kind business deal where an established, successful, minority-owned broadcaster purchased television stations from a large, historically white-owned and operated broadcaster who was, upon information and belief, being paid significant fees. That was until Circle City, the minority-owned and operated business, came along offering equal if not superior content. However, because Circle City is minority owned, Dish prepared a special deal for it. Dish readily

propounded a supposed contract offer to Circle City that would pay only a tiny fraction of the fees believed to have been paid to Nexstar, and refused to negotiate with Circle City for a fair price, effectively hobbling Circle City's ability to serve its market.

II. THE PARTIES

12. Plaintiff Circle City is a Delaware Limited Liability Company with its principal place of business in Indianapolis, Indiana where it owns and operates the Indianapolis television stations, WISH TV-CW and WNDY-MyNet TV.

13. Plaintiff NABOB is a nonprofit corporation with its principal place of business in Washington, D.C.

14. Defendant Dish Network, L.L.C. is a Colorado Limited Liability Company. It may be served through its registered agent for process by serving the complaint and summons on Timothy Allen Messner at 9601 South Meridian Boulevard, Englewood, CO 80112, or wherever he may be found.

III. JURISIDCTION AND VENUE

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

16. 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

17. On September 19, 2019, majority African American owned and operated Circle City purchased two standalone network-affiliated television stations in Indianapolis, IN; WISH-TV, CW Affiliate and WNDY-TV, MyNet Affiliate, from Nexstar Broadcasting, Inc. ("Nexstar").

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 any and everything Nexstar offered as a broadcaster and a business partner. 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 area.*

19. Other than these improvements, the only meaningful change was the fact that the stations were now majority owned by an African American, DuJuan McCoy. What should have been recognized and celebrated as a great American accomplishment and advancement when Mr. McCoy purchased the stations, it was viewed by Dish as a downgrade. Dish 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 2 of the distributors serving Indianapolis welcomed Circle City with open arms -- Dish and AT&T/Direct TV. AT&T and Direct TV are

owned and managed by one company, AT&T. Prior to Mr. McCoy securing long-term deals with such large distributors, these distributors agreed to assign the existing retransmission agreements which they had with Nexstar. In contrast Dish refused to even agree to an assignment of the remaining term of its retransmission agreements with Nexstar to Circle City, even though Dish had the unfettered right to agree to such an assignment.

21. Prior to Circle City's purchase, on information and belief, Dish 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 Dish's retransmission agreements with Nexstar).

22. When Mr. McCoy came on the scene, Dish's fair treatment of the station stopped. Dish's approach to Circle City reflected its bias against the race of Circle City's owner, Mr. McCoy. Dish offered to contract with Circle City for pennies on the dollar compared to the rates it paid the prior broadcaster, Nexstar. The message to Mr. McCoy from Dish was clear: minority broadcasters need not apply.

23. Dish's present behavior in Indianapolis presents an existential threat to minority owned small business.

24. To understand why this retransmission dispute is so unusual and so dangerous, consider that Dish (1) paid a white owned company owning the two Indianapolis stations considerable and fair retransmission consent compensation and (2) offered that company's successor owner, Circle City, a small fraction of the fees for the very same assets (which Circle City had improved). Dish is showing with its actions that

it would rather limit and diminish minority owned businesses in a manner that they would never have a chance at competing in their respective markets.

25. Dish's behavior is even more dangerous because if a minority broadcaster desperate for carriage, accepts a retransmission consent offer of nearly nothing, such as the one being offered by Dish 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 in the coming years. At that point, there will be a race to the bottom that ultimately puts Circle City in a diminished and precarious financial position.

26. When a large MVPD is embroiled in a retransmission consent dispute with a non-minority broadcaster, the dispute inevitably works itself out. But if a minority broadcaster, like Circle City, refuses to accept an unfair, pennies on the dollar offer from a MVPD (Dish), the stations will go dark and stay dark (which is currently the case with WISH TV-CW and WNDY-MyNet TV) . 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 which is sometimes called arbitrage. Allowing this would systemically render minority broadcasters who purchase these entry level type stations obsolete, or simply hanging on with an unsustainable operation.

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

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

28. Dish has engaged in, and is engaging in, intentional racial discrimination in contracting, which is 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. Dish's intentional acts of discrimination, in violation of 42 U.S.C. § 1981, have had an adverse impact on Circle City, for which it complains.

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

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

31. Circle City initially believed it could negotiate with Dish 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 Dish that it would never be viewed in a non-discriminatory manner, nor treated equally, as is the case with non-minority owned and managed broadcasting companies.

32. Dish 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 not allowing Circle City its right to make and enforce contracts as is enjoyed by white persons in America. Section 1981 prohibits racial discrimination in contracting, the very conduct exhibited by Dish herein.

33. Accordingly, Circle City sues for retransmission fees at a fair market rate, actual and punitive damages, interest, reasonable attorneys' fees and costs resulting from the intentional misconduct exhibited by Dish in its disingenuous "negotiations" with Circle City.

JURY DEMAND

34. Plaintiff hereby demands a jury trial on all issues that can be submitted to a jury.

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 March 9, 2020.

Respectfully submitted,

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

/s/ Bruse Loyd

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