

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

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| In the Matter of |) | |
| |) | |
| The Lafayette City-Parish Consolidated |) | |
| Government of Lafayette, Louisiana, |) | |
| d/b/a Lafayette Utilities System, |) | |
| |) | |
| Complainant, |) | File No. _____ |
| |) | |
| v. |) | |
| |) | |
| Communications Corp. of America, Inc., |) | |
| White Knight Broadcasting, Inc., and |) | |
| Duane Lammers, |) | |
| |) | |
| Defendants. |) | |

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AFFIDAVIT OF STEVEN GLEN CREEDEN

1. My name is Steven Glen Creeden. I am more than 21 years old, am competent to make this affidavit, and have personal knowledge of the facts set forth below. My business address is 1314 Walker Road, Lafayette, Louisiana, 70506.

2. I am employed by R.W. Beck as a Senior Consultant, Cable Television. In that capacity, I am assigned to assist the Lafayette City-Parish Consolidated Government of Lafayette, Louisiana, d/b/a the Lafayette Utilities System (“LUS”), in developing a fiber-to-the-home communications system. In particular, I am assisting LUS in developing retransmission consent agreements to obtain cable television programming for its system.

3. Lafayette, a city of 120,000 residents, is located in South Louisiana about halfway between Baton Rouge and Lake Charles on U.S. Interstate Route 10. In January 2009, Lafayette’s utility department, Lafayette Utilities System (LUS), is going to launch a \$110

million fiber-to-the-home system. The system will consist of more than 870 miles of optical fiber and state-of-the-art equipment and facilities, and it will make advanced communications services and capabilities available to more than 60,000 homes, schools, businesses, and institutions throughout the City. Unique among fiber systems in the United States, the Lafayette system will enable all businesses and residents within the City to communicate with each other at speeds of at least 100 Megabits/second in both directions without extra charge.

4. Lafayette is one of the most conservative cities in America, and its leadership and residents typically look first to the private sector to meet the community's needs for products and services.¹ That is just what occurred here. Recognizing that a world-class fiber-to-the-home system would set Lafayette apart from other cities in Louisiana and the United States and would serve as a powerful engine of economic development, educational and occupational opportunity, global competitiveness, and quality of life, the City's leaders repeatedly asked the incumbent communications providers to develop such a system in Lafayette. Only after AT&T and Cox emphatically refused several times did the City decide to take matters into its own hands and develop a publicly owned and operated fiber system. Supported by a rare consensus among both the City's Democratic and Republican parties, the City's business community, including all 20 past heads of the local Chamber of Commerce, and numerous community groups, the City put the matter to a referendum and won a landslide vote of 62-38% to proceed with the development of a public fiber system.

5. For the Lafayette fiber system to succeed financially, it must be able to offer the "triple play" of competitive voice, broadband, and cable services. To do that, LUS must be able

¹ Lafayette was ranked the ninth most conservative city in the United States in Bay Area Center for Voting Research, *The Most Conservative and Liberal Cities in the United States*, <http://tinyurl.com/662znu> (last visited October 17, 2008).

to obtain essential cable television programming – particularly from the four major television networks, ABC, CBS, Fox and NBC – at reasonable and non-discriminatory rates, terms and conditions. Knowing that LUS has an urgent need to finalize its cable lineup by January 2009, the Defendants have sought to use their exclusive control over “must-have” Fox programming to obtain grossly excessive rates from LUS, not just for the Fox programming itself, but also for a local low-power station and for an out-of-market channel that LUS does not want.

6. Specifically, the Defendants have threatened to withhold KADN-TV/DT, the Fox affiliate for Lafayette, until LUS (1) agrees to pay rates for KADN that far above the going rates for similar programming in Lafayette, (2) agrees to carry KLAFLP, a limited-audience local low-power station, and WVLA, a Baton Rouge station, and (3) agrees to pay for KLAFLP and WVLA the same exorbitant rates that the Defendants demand for KADN-TV/DT.

7. On March 13, 2008, Terry Huval, Utility Manager of LUS, wrote letters to various broadcasters, including ComCorp, notifying them that LUS was going to enter into the cable business in Lafayette and wanted permission to retransmit their signals pursuant to 47 C.F.R. § 76.64. A sample is appended as Attachment A.

8. On April 8, 2008, Gary Boulanger of ComCorp responded to Mr. Huval with letters on behalf of KADN and WGMB. The letters stated that KADN and WGMB elected retransmission consent pursuant to 47 C.F.R. § 76.64(f) and would forward their standard retransmission consent agreements under separate cover. Attachments B and C.

9. Also on April 8, 2008, in language nearly identical to Mr. Boulanger’s letters, except for the name and location of the station, Sheldon Galloway of White Knight responded to Mr. Huval stating that WVLA elected retransmission consent pursuant to 47 C.F.R. § 76.64(f)

and would forward its standard retransmission consent agreement under separate cover. Attachment D.

10. Shortly afterward, Defendant Lammers sent to LUS two draft retransmission consent agreements. One of these draft agreements, which Lammers submitted as agent for ComCorp, covered both KADN and KLAF. It set forth the following monthly per-subscriber rates for each: [REDACTED] for 2008, [REDACTED] for 2009, [REDACTED] for 2010, and [REDACTED] for 2011. Attachment E.

11. The other agreement, which Defendant Lammers submitted as agent for White Knight, covered WVLA and demanded the same rates that ComCorp demanded for KADN and KLAF: [REDACTED] for 2008, [REDACTED] for 2009, [REDACTED] for 2010, and [REDACTED] for 2011. Attachment F.

12. In contrast to the ABC affiliate that serves Lafayette, which has a large local news, weather, and programming staff in Lafayette and provides extensive Lafayette-oriented programming, KADN has no local news or programming staff and merely imports programming from a Fox affiliate in Baton Rouge. That affiliate – and, in turn, KADN – treats Baton Rouge as the relevant local market and covers affairs in Lafayette only sporadically, when and to the extent they may be of interest to viewers in Baton Rouge.

13. KLAF once had its own transmitter in Lafayette, but ever since ComCorp emerged from its bankruptcy proceeding in 2007, KLAF has reached its limited audience through one of KADN's multicast streams. Thus, KLAF's costs are likely to be considerably lower than other low-power stations.

14. Considering the limitations in the services that KADN and KLAF was proposing and the rates that LUS was simultaneously negotiating with other comparable stations, LUS believed that ComCorp's and White Knight's proposed rates were grossly inflated for the

Lafayette market. For example, LUS was negotiating (and has now entered into) a retransmission consent agreement with KATC, a full-power ABC affiliate based in Lafayette, LA, for a flat monthly per-subscriber rate of [REDACTED] for 2009, 2010, and 2011. Attachment G. Similarly, LUS was negotiating (and has now entered into) a retransmission consent agreement with KPLC, a full-power NBC affiliate in Lake Charles, LA, for monthly per-subscriber rates of [REDACTED] for 2009, [REDACTED] for 2010, and [REDACTED] for 2011, and WAFB, a full-power CBS affiliate in Baton Rouge, for monthly per-subscriber rates of [REDACTED] for 2009 through 2011. Attachment H. LUS was also negotiating (and has now entered into) a retransmission consent agreement with KAJN Lafayette, a low-power Lafayette station, for a monthly per-subscriber rate for [REDACTED] for 2009 through 2011. Attachment I. As to low power stations, LUS was negotiating (and has now entered into) a retransmission consent agreements with KLWB and KLFT, two low-power stations in Lafayette, for monthly per-subscriber rates of [REDACTED] for 2009, [REDACTED] for 2010, and [REDACTED] for 2011.

15. On or about August 5, 2008, LUS sent to Mr. Lammers a counterproposal for KADN and KLAF. Attachment J. Based on its assessment of the market rates prevailing in Lafayette, LUS proposed a package of cash payments and various promotional and advertising concessions that it believed would be beneficial to all concerned. The package included monthly per-subscriber rates for KADN of [REDACTED] for 2008, [REDACTED] for 2009, [REDACTED] for 2010, and [REDACTED] for 2011. For KLAF, LUS proposed a uniform rate of [REDACTED] for 2008-11. *Id.*

16. LUS did not make a counterproposal for WVLA. WVLA is a Baton Rouge station, and its programming reflects that city's distinct identity and culture,² and White Knight

² According to Google Maps, the driving distance between Baton Rouge and Lafayette is 60.1 miles, <http://tinyurl.com/37kw64>.

was not offering to provide any local Lafayette programming or news. Furthermore, LUS was negotiating (and has now entered into) a retransmission consent agreement at substantially lower rates with another NBC affiliate, KPLC. See Attachment H above. KPLC is significantly viewed in Lafayette, so WVLA could not invoke network non-duplication or syndicated programming exclusivity rights to prevent LUS from importing signals from KPLC. LUS therefore had no interest in carrying WVLA.

17. On August 14, 2008, the Defendant Lammers responded by email to LUS's counterproposal. Attachment K. In its entirety, the email read as follows, with our emphasis added:

From: Duane Lammers [mailto:duanelammers@centurytel.net]
Sent: Thursday, August 14, 2008 2:14 PM
To: Steve Creeden
Subject: RE: Retransmission Consent Counter Proposal

Steve:

I am not going to bother working on this until we get closer to an agreement on economics. So your counter is hereby rejected due to the suggested carriage fees. *We are not interested in promos. Cash is king. In addition, WVLA will be part of any deal on the same terms that you carry the other stations.* If you would like to make another offer, let me know.

Duane Lammers

18. On September 8, 2008, the Defendants took two steps to raise the pressure on LUS. One was to assert network non-duplication and syndicated programming exclusivity, through a letter of that date from Steve Pruett, KADN's CEO, to LUS's Terry Huval. Attachment L. This precluded LUS from obtaining from any other source the Fox and syndicated programming listed in the appendix to the letter. The other step was to send me, as representative of LUS, the following email:

From: Duane Lammers [mailto:duanelammers@centurytel.net]
Sent: Monday, September 08, 2008 11:35 AM
To: Steve Creeden
Subject: Signup

Are you signing customers up for service? If so, don't you think you have an obligation to change your website so that you are not representing local station carriage that has not been granted?

Duane Lammers

Attachment M.

19. On behalf of LUS, I responded as follows:

From: Steve Creeden
Sent: Monday, September 08, 2008 2:53 PM
To: 'Duane Lammers'
Subject: RE: Signup

I don't understand the purpose of your last e-mail. It does not seem to be related to our negotiations for reaching an agreement for carriage of the stations you represent.

We are not taking orders from prospective customers, and we have not publicly disclosed our channel lineup. Our website is accurate. The FAQ you reference states that our television lineup will contain "local channels" and it will. We do not infer in any way that it will contain any of the channels you represent.

Thanks for your concern and interest,

Steve Creeden

Attachment N.

20. On October 6, 2008, Defendant Lammers emailed two revised agreements to LUS, stating in his cover email that "We have changed our contracts, so I am sending you new copies. I also gave you a break on rates." Attachment O. One of the revised agreements, labeled "Lafayette Utility White Knight Retrans10.06.08.doc," identified KFXK, a Fox affiliate in Longview/Tyler, Texas, as the station covered, and it set forth monthly per-subscriber rates of

█████ for 2009, █████ for 2010, and █████ for 2011. Attachment P. The other agreement, labeled “Lafayette Utility CCA Retrans10.06.08.doc,” did not identify any station, and set forth the same rates as the ones for KFXK. Attachment Q.

21. On October 10, 2008, I called Defendant Lammers to obtain clarification of his transmission of October 6. During the call, Defendant Lammers confirmed that he was still representing both ComCorp and White Knight, apologized for not having read the agreements before sending them to LUS, and stated that the Defendants were still requiring that LUS accept all three stations – KADN, KLAF, and WVLA. He also stated that he might consider lower rates for KLAF as the negotiations proceeded.

22. On October 14, 2008, I, joined by Frank Ledoux of LUS, had a follow-up telephone conversation with Defendant Lammers. Mr. Ledoux opened the discussion by stating that he was a manager of the LUS fiber project and that he was prepared and fully authorized to reach a successful conclusion of the negotiations. Turning first to WVLA, Mr. Ledoux and I stated that LUS had no interest in obtaining that station, and they asked that Defendant Lammers reconsider his position that LUS had to take all three stations – KADN, KLAF, and WVLA. Defendant Lammers responded that he had insisted from the outset that LUS had to take the three stations as a package, that his position had not changed, and that “there was no sense in wasting any of our time proceeding with this call unless LUS agreed to discuss an arrangement that specifically included all three stations.” Defendant Lammers then added, “I have the leverage and will use it. You may or may not know who I am, but there are only two guys in the country that do what we do, and I am one of them. I have pulled stations off for up to 10-12 months in order to get an agreement.” Mr. Ledoux then asked Defendant Lammers to confirm that he would not consider a proposal that did not include WVLA. At first, Defendant Lammers

