

GAMMON & GRANGE, P.C.

ATTORNEYS AND COUNSELORS AT LAW

ROBERT B. ADAMS†
A. WRAY FITCH III
JAMES A. GAMMON*
GEORGE R. GRANGE II
STEPHEN S. KAO
STEPHEN H. KING
BROOKE A. LARSON
NANCY OLIVER LESOURD
KENNETH E. LIU
JUSTINA URAM MUBANGU**
TIMOTHY R. OBITTS
PATRICK D. PURTILL
W. FRANKLIN PUGH, P.L.C.‡
DANIEL D. SMITH, P.C.‡
SCOTT J. WARD

SEVENTH FLOOR
8280 GREENSBORO DRIVE
McLEAN, VA 22102-3807

TELEPHONE (703) 761-5000
FACSIMILE (703) 761-5023

WEBSITE
www.GG-LAW.com

EMAIL
GG@GG-LAW.COM

LEESBURG OFFICE
SUITE 345
161 FORT EVANS ROAD
LEESBURG, VA 20176

* CO-FOUNDER 1934-2011
** NOT ADMITTED TO VA
† OF COUNSEL -- McLEAN
‡ OF COUNSEL -- LEESBURG

November 5, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

—BY HAND DELIVERY AND—
ELECTRONIC MAIL

Re: Complaint of Randall Terry for President regarding WJLA-TV's violation of 47 U.S.C. §312 and §315

To: Media Bureau, Policy Division, Political Programming Branch
Attn: Robert Baker and Hope Cooper

Dear Ms. Dotrch:

Randall Terry for President, through its counsel Gammon and Grange, is filing this letter request regarding WJLA-TV's willful and ongoing denial of reasonable access to Randall Terry for President under sections 312 and 315 of the Communications Act. As Election Day is only one day away, the matter is urgent.

In an October 17, 2012 email from Susan Petro, WJLA-ABC7 Account Executive, WJLA-TV denied Mr. Randall Terry reasonable access under sections 312 and 315 of the Communications Act. Specifically, WJLA-TV asserted that:

WJLA's over-the-air, terrain limited, broadcast signal (36 dBu) does not encompass any West Virginia county political subdivision. The population capable of potentially receiving this signal would be de minimis under FCC guidance. As a result, Section 312(a)(7) of the Communications Act does not require access to candidates qualified in West Virginia on Washington, DC-licensed WJLA.

On October 31, 2012, the Commission published its decision in *In re Complaint of Randall Terry for President And Pro-Life Candidates Against Station WUSA (TV) Washington, D.C.*, DA 12-1734, (released on October 31, 2012). The Commission concluded "that it would be unreasonable for the

Station [WUSA-TV] not to provide reasonable access to Terry because Terry is a legally qualified candidate in West Virginia and the Station's digital noise limited service contour ("NLSC") encompasses more than a de minimis portion of the population of West Virginia." The Commission noted that before the digital television transition, a television station's grade B contour established the service area for the purpose of determining reasonable access obligations and the Commission had since stated that the NLSC is the counterpart to the Grade B contour for digital television stations. As the election season is a limited time period, the Commission recognized the importance of and the need for prompt determinations and concluded the NLSC, the present-day equivalent of the Grade B contour used in *Levinson*, should be utilized to determine reasonable access. The Commission used the NLCS from the Station's Profile as it appeared on the Commission's website and determined that the Station covered all of Jefferson County and part of Berkeley County in West Virginia. The Commission then concluded that considering just Jefferson County's population, the Station's contour could not be considered de minimis.

On November 1, 2012, Mr. Terry sent a copy of the Commission's decision to WJLA-TV's counsel requesting it honor the campaign's outstanding request for reasonable access in light of the decision (see attached communication). Mr. Terry noted that "[L]ike WUSA-TV, WJLA-TV's NLSC covers all of Jefferson County, WV and the majority of Berkeley County, WV. See WJLA-TV's NLSC map at <https://stations.fcc.gov/station-profile/wjla-tv/contour-maps/>. WJLA-TV's NLSC encompasses more than a de minimis portion of the population of West Virginia and WJLA-TV continues to willfully deny reasonable access to a legally qualified candidate under section 312."

Later that day, WJLA-TV's counsel responded via Ms. Petro that WJLA-TV would not provide reasonable access to Mr. Terry. Despite the Commission's October 31 decision stating Mr. Terry is a legally qualified candidate for Federal office in West Virginia, WJLA-TV now asserts that Mr. Terry is "attempting to use time purchased on WJLA to affect the election in Virginia where he is not a legally qualified candidate" and that WJLA-TV "believe[s] that Section 312 of the Communications Act does not require WJLA to grant access to his campaign."

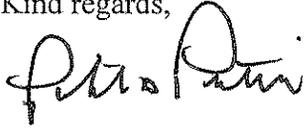
WJLA-TV is not asserting that Mr. Terry is not a legally qualified candidate for Federal office from West Virginia. WJLA-TV is not asserting that its signal does not reach West Virginia. WJLA-TV is asserting that it has the authority to deny reasonable access to a legally qualified candidate based on the purpose of the candidate's advertising. However, Mr. Terry's motives or the message of his advertisements are absolutely immaterial to whether or not he is a "legally qualified candidate" under the Communications Act. What is material is whether Mr. Terry has complied with the laws, regulations and administrative procedures to appear on the ballot. He has. A candidate who secures time under 47 USCS § 315 need not talk about a subject directly related to his candidacy and may use time as he deems best, for to deny a person time on ground that he is not using it in furtherance of his candidacy is an exercise of censorship prohibited by § 315. *In re Pat Paulsen*, 33 FCC2d 835 (1972).

Mr. Terry contends that WJLA-TV's ongoing refusal demonstrates a flagrant disregard of important federally mandated laws guaranteeing access to candidates such as Mr. Terry and of the Commission's authority to administer and enforce sections 312 and 315 of the Communications Act.

Given the already substantial delay and the fact that Election Day is one day from now, Mr. Terry asks the Commission to immediately direct WJLA-TV to provide Mr. Terry reasonable access.

Thank you for your assistance in this matter.

Kind regards,

A handwritten signature in black ink, appearing to read "Patrick D. Purtill". The signature is written in a cursive style with a large initial "P".

A. Wray Fitch III
Patrick D. Purtill
Gammon & Grange, P.C.

cc: Jerry Fritz, Corporate Counsel, WJLA-TV, via email: jfritz@allbrittontv.com
Robert Baker, Federal Communications Commission, via email: robert.baker@fcc.gov
Hope Cooper, Federal Communications Commission, via email: hope.cooper@fcc.gov

Attachment(s): Correspondence between WJLA and Terry Campaign

Patrick Purtill - Fwd: WJLA-TV's Continuing Denial of Reasonable Access to Terry for President

From: Kathy Offerman <kmofferman@gmail.com>
To: Patrick Purtill <pdp@gg-law.com>, Randall Terry <1randallterry@gmail.com>
Date: 11/1/2012 4:41 PM
Subject: Fwd: WJLA-TV's Continuing Denial of Reasonable Access to Terry for President

----- Forwarded message -----

From: Susan Petro <spetro@wjla.com>
Date: Thu, Nov 1, 2012 at 4:37 PM
Subject: RE: WJLA-TV's Continuing Denial of Reasonable Access to Terry for President
To: Kathy Offerman <kmofferman@gmail.com>
Cc: Robert Scutari <rscutari@wjla.com>, Bill Lord <blord@wjla.com>, "Fritz, Jerry" <jfritz@allbrittontv.com>

Hi Kathy:

Please see our response below:

WJLA has reviewed your request for time on behalf of Randall Terry on WJLA's 5:00 newscast today. We are not able to grant this request. Although we have read the FCC Media Bureau's decision regarding the complaint filed against WUSA, we do not believe it requires WJLA to grant your request. Inasmuch as Mr. Terry admits that he is attempting to use time purchased on WJLA to affect the election in Virginia where he is not a legally qualified candidate, we believe that Section 312 of the Communications Act does not require WJLA to grant access to his campaign. The Media Bureau's decision does not address these statutory or other Constitutional concerns with Mr. Terry's request for time.

If you have any questions regarding the above response, please contact our corporate counsel Jerry Fritz at jfritz@allbrittontv.com.

Thank you.

Susan Petro

Account Executive

WJLA-ABC7

1100 Wilson Blvd., 6th Floor

Arlington, VA 22209

703-236-9606 - Direct Line

703-236-2341 - Fax

spetro@wjla.com

From: Kathy Offerman [mailto:kmofferman@gmail.com]
Sent: Thursday, November 01, 2012 11:35 AM
To: Susan Petro
Cc: Patrick Purtill
Subject: Fwd: WJLA-TV's Continuing Denial of Reasonable Access to Terry for President

Hi Susan,

What is the status of the order that I placed for Mr. Terry on 10/28? The original requested air date was yesterday. I am asking that the spot run today as we are in the final 4 days of the campaign and Mr. Terry has not been given his equal opportunities that he is entitled to. You should be in receipt of the payment from the campaign.

Thanks,
Kathy

----- Forwarded message -----

From: Patrick Purtill <PDP@gg-law.com>
Date: Thu, Nov 1, 2012 at 9:26 AM
Subject: WJLA-TV's Continuing Denial of Reasonable Access to Terry for President
To: jfritz@allbrittontv.com, rscutari@wjla.com
Cc: Kathy Offerman <kmofferman@gmail.com>, Wray Fitch <AWF@gg-law.com>

November 1, 2012

Mr. Jerry Fritz and Robert Scutari

Counsel

WJLA-TV

via email: jfritz@allbrittontv.com and rscutari@wjla.com

Dear Messrs. Fritz and Scutari:

In an October 17, 2012 email from Susan Petro, Account Executive, WJLA-ABC7, WJLA-TV denied Mr. Randall Terry reasonable access under sections 312 and 315 of the Communications Act. Specifically, WJLA-TV asserted that:

WJLA's over-the-air, terrain limited, broadcast signal (36 dBu) does not encompass any West Virginia county political subdivision. The population capable of potentially receiving this signal would be de minimis under FCC guidance. As a result, Section 312 (a)(7) of the Communications Act does not require access to candidates qualified in West Virginia on Washington, DC-licensed WJLA.

In our opinion, WJLA-TV is, and has been, in violation of the Commission's reasonable access rules. For weeks, WJLA-TV has willfully denied a legally qualified candidate for Federal office reasonable access under sections 312 and 315 of the Communications Act.

Attached to this email is a copy of the Commission's decision *In re Complaint of Randall Terry for President And Pro-Life Candidates Against Station WUSA (TV) Washington, D.C.*, DA 12-1734, MEMORANDUM OPINION AND ORDER. In this decision, the Commission concluded "that it would

be unreasonable for the Station not to provide reasonable access to Terry because Terry is a legally qualified candidate in West Virginia and the Station's digital noise limited service contour ("NLSC") encompasses more than a de minimis portion of the population of West Virginia."

Like WUSA-TV, WJLA-TV's NLSC covers all of Jefferson County, WV and the majority of Berkeley County, WV. See WJLA-TV's NLSC map at <https://stations.fcc.gov/station-profile/wjla-tv/contour-maps/>. WJLA-TV's NLSC encompasses more than a de minimis portion of the population of West Virginia and WJLA-TV continues to willfully deny reasonable access to a legally qualified candidate under section 312.

As the election is four days from today, Ms. Offerman will be contacting Ms. Petro first thing this morning to complete purchase of airtime for Mr. Terry's campaign. I have copied Ms. Offerman on this email.

If WJLA-TV has any questions, please contact me. Thank you.

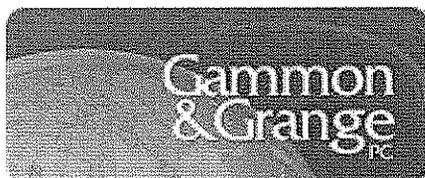
Sincerely,

Patrick D. Purtil

Gammon & Grange, P.C.

Patrick D. Purtil

Associate



Gammon & Grange, P.C.

8280 Greensboro Dr - 7th Floor
McLean, VA 22102
Phone: [703-761-5000](tel:703-761-5000) ext. 123
Fax: [703-761-5023](tel:703-761-5023)
PDP@GG-Law.com

© 2012 Gammon & Grange, P.C. intends the information contained in this transmission for the use of the individual or entity to which it is addressed. This message may contain information that is privileged, confidential, attorneys's work product and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient (or the employee or agent responsible for delivering it to the intended recipient), you are hereby notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately at [703-761-5000](tel:703-761-5000) and delete the original message from your email system. Thank you.

>>> Kathy Offerman <kmofferan@gmail.com> 10/17/2012 10:45 AM >>>

----- Forwarded message -----

From: **Susan Petro** <spetro@wjla.com>
Date: Fri, Oct 12, 2012 at 1:44 PM
Subject: Randall Terry
To: Kathy Offerman <kmofferan@gmail.com>
Cc: Robert Scutari <rscutari@wjla.com>

Kathy:

On the advice of our station counsel, we are rejecting the spot for Randall Terry based on our inability to reach the target audience. Please see below from our counsel. If you have questions, please feel free to contact Jerry Fritz – his information is below. Thank you.

WJLA's over-the-air, terrain limited, broadcast signal (36 dBu) does not encompass any West Virginia county political subdivision. The population capable of potentially receiving this signal would be *de minimis* under FCC guidance. As a result, Section 312(a)(7) of the Communications Act does not require access to candidates qualified in West Virginia on Washington, DC-licensed WJLA.

Jerry Fritz

jfritz@allbrittontv.com

Susan Petro

Account Executive

WJLA-ABC7

1100 Wilson Blvd., 6th Floor

Arlington, VA 22209

703-236-9606 - Direct Line

703-236-2341 - Fax

spetro@wjla.com

--

Kathleen Offerman
125 N Lincoln Ave
Sterling, VA 20164
703-609-3517

--

Kathleen Offerman
125 N Lincoln Ave
Sterling, VA 20164
703-609-3517

--

Kathleen Offerman
125 N Lincoln Ave
Sterling, VA 20164
703-609-3517