

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Howard Stirk Holdings, LLC; HSH Flint (WEYI)) MB Docket No. 19-168
Licensee, LLC; and HSH Myrtle Beach (WWMB))
Licensee, LLC)
)

ORDER

Adopted: May 1, 2020

Released: May 1, 2020

By the Chief, Media Bureau:

1. Broadcast television stations and multichannel video programming distributors (MVPDs) must negotiate in good faith for consent to retransmit commercial television broadcast signals.¹ The Federal Communication Commission’s (FCC or Commission) rules identify an objective list of negotiation standards, violation of any of which constitutes a *per se* breach of the duty to negotiate in good faith.² The Media Bureau of the FCC has entered into a Consent Decree to resolve its consideration of enforcement with respect to violations of the Commission’s retransmission consent rules by Howard Stirk Holdings, LLC (HSH).³ To settle this matter, HSH admits that it violated the good faith negotiation requirements, will pay a \$100,000 civil penalty, and will implement a compliance plan to help ensure future compliance with the Commission’s rules.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced consideration of enforcement regarding HSH’s violation of section 76.65 of the Commission’s rules.⁴

3. Accordingly, **IT IS ORDERED** that, pursuant to the authority delegated by sections 0.61 and 0.283 of the Commission’s rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

4. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** with respect to Howard Stirk Holdings, LLC; HSH Flint (WEYI) Licensee, LLC; and HSH Myrtle Beach (WWMB) Licensee, LLC.

¹ 47 U.S.C. § 325(b)(3)(C).

² 47 CFR §§ 76.65(b)(1)(i)–(ix) (list of *per se* negotiating standards).

³ *DIRECTV, LLC; AT&T Services, Inc., Complainants, v. Deerfield Media, Inc., et al, Defendants*, MB Docket No. 19-168, Memorandum Opinion and Order, 34 FCC Rcd 10367 (MB 2019), *Application for Review filed* (Dec. 9, 2019)(finding that HSH, and other station groups, refused to negotiate, unreasonably delayed negotiations, and failed to respond to proposals). We note that HSH did not join the other defendants in the application for review.

⁴ 47 CFR § 76.65.

⁵ 47 CFR §§ 0.61, 0.283.

5. **IT IS FURTHER ORDERED** that, upon the Commission's return to regular operations, a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Armstrong Williams, Howard Stirk Holdings, LLC, 201 Massachusetts Avenue, NE, Washington, DC 20002, and copied to Colby M. May, Esq., PC, PO Box 15473, Washington, DC, 20003.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Media Bureau

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Howard Stirk Holdings, LLC; HSH Flint (WEYI))	MB Docket No. 19-168
Licensee, LLC; and HSH Myrtle Beach (WWMB))	
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CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Howard Stirk Holdings, LLC, Howard Stirk Holdings II, LLC and the licensees of WEYI-TV, Saginaw, Michigan, WWMB(TV), Florence, South Carolina, KHSV(TV), Las Vegas, NV, WGWG(TV), Charleston, SC, WGWW(TV), Anniston, AL, WSES(TV), Tuscaloosa, AL, and WLYH(TV), Lancaster, PA (collectively “HSH”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of resolving and terminating the Media Bureau’s Investigation, as defined and discussed below.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.⁶
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “*AT&T Order*” means *DIRECTV, LLC; AT&T Services, Inc., Complainants, v. Deerfield Media, Inc., et al, Defendants*, MB Docket No. 19-168, Memorandum Opinion and Order, 34 FCC Rcd 10367 (MB 2019), *Application for Review filed* (Dec. 9, 2019).
 - (d) “Bureau,” “Media Bureau,” or “MB” means the Media Bureau of the Federal Communications Commission.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which HSH is subject by virtue of its business activities.
 - (g) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at Paragraph 13.
 - (h) “Compliance Requirements” means the obligations and procedures described in this Consent Decree at Paragraphs 12-15.
 - (i) “Covered Employees” means all employees of HSH who perform or directly supervise the performance of duties that relate to HSH’s responsibilities under the Retransmission Consent Rules.

⁶ 47 U.S.C. § 151 *et seq.*

- (j) “Effective Date” means the date by which all of the following have been accomplished: both the Bureau and HSH have signed the Consent Decree, and the Bureau has released the Adopting Order adopting this Consent Decree.
- (k) “HSH” or “the Company” means Howard Stirk Holdings, LLC, Howard Stirk Holdings II, LLC, the licensees of WEYI-TV, Saginaw, Michigan, WWMB(TV), Florence, South Carolina, KHSV(TV), Las Vegas, NV, WGWG(TV), Charleston, SC, WGWW(TV), Anniston, AL, WSES(TV), Tuscaloosa, AL, and WLYH(TV), Lancaster, PA, and their affiliates, subsidiaries, predecessors-in-interest, assigns, transferees, and successors-in-interest.
- (l) “Investigation” means any Bureau consideration of enforcement with respect to the violations of the Retransmission Consent Rules by HSH that were discussed in the AT&T Order.
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by HSH to implement the Compliance Plan.
- (n) “Parties” means HSH and the Bureau, each of which is a “Party.”
- (o) “Retransmission Consent Rules” means Section 325 of the Act and Part 76, Subpart D, of the Rules.
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Termination Date” means the day 36 months after the Effective Date.

II. BACKGROUND

3. Section 325 of the Act prohibits broadcast television stations and multichannel video programming distributors (MVPDs) from “failing to negotiate in good faith” for consent to retransmit commercial television broadcast signals.⁷ Specifically, section 325(b)(3)(C)(ii) directs the Commission to establish regulations that:

prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.⁸

In its *Good Faith Order*,⁹ the Commission adopted rules implementing the good faith negotiation standard in section 325 and complaint procedures for alleged violations of these rules.¹⁰ The *Good*

⁷ 47 U.S.C. § 325(b)(3)(C).

⁸ 47 U.S.C. § 325(b)(3)(C)(ii).

⁹ *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, CS Docket CS 99-363, First Report and Order, 15 FCC Rcd 5445, 5480, para. 82 (*Good Faith Order*), recon. granted in part, Order on Reconsideration, 16 FCC Rcd 15599 (2001) (“[A]s with all violations of the Communications Act or the Commission’s rules, the Commission has the authority to impose forfeitures for violations of Section 325(b)(3)(C)” and the good faith rules).

¹⁰ *Good Faith Order*, 15 FCC Rcd 5445.

Faith Order adopted a two-part test for good faith.¹¹ The first part of the test consists of an objective list of negotiation standards.¹² While the good faith negotiation requirement was originally imposed only on television broadcast stations, a reciprocal obligation was later imposed on MVPDs.¹³ Each of these standards apply to “Negotiating Entities,” which the rules define as “a broadcast television station or [MVPD].”¹⁴ If any of the standards on this list are violated by an individual station or MVPD during negotiations, it constitutes a *per se* breach of the duty to negotiate in good faith.¹⁵

4. On June 18, 2019, DIRECTV, LLC and AT&T Services, Inc. (collectively, “AT&T”) filed a good faith negotiation complaint against eighteen (18) licensees of nine (9) station groups representing twenty (20) stations, including two HSH stations – WEYI, Flint, Michigan, and WWMB, Florence, SC.¹⁶ Following the pleading cycle in that proceeding, on November 8, 2019, the Bureau granted AT&T’s Complaint in part, holding that the station groups, including HSH, had persistently refused to negotiate, unreasonably delayed negotiations, and failed to respond to AT&T’s proposals. The Bureau found that these actions had violated three *per se* good faith negotiation standards.¹⁷ The Bureau explained that the *AT&T Order* “constitute[d] only a partial resolution of this matter” and “reserve[d] the right to take enforcement action proposing a forfeiture” against the station groups, including HSH.¹⁸

5. Pursuant to the Bureau’s directive in the *AT&T Order* that the parties in the proceeding promptly conduct good faith negotiations, HSH completed negotiations with AT&T and reached a retransmission consent carriage agreement. Notice that the agreement had been reached was filed with the Commission on November 12, 2019.¹⁹

6. This Consent Decree resolves the Investigation. HSH and the Bureau have engaged in settlement negotiations regarding all facets of the Investigation.²⁰ The Bureau and HSH agree to the following terms and conditions of settlement, and hereby enter into this Consent Decree as provided herein.

¹¹ *Id.* at 5457, para. 30.

¹² 47 CFR §§ 76.65(b)(1)(i)–(ix) (list of *per se* negotiating standards).

¹³ *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, Report and Order, 20 FCC Rcd 10339 (2005). *See also* 47 U.S.C. § 325(b)(3)(C)(iii) (prohibiting an MVPD from failing to negotiate in good faith for retransmission consent).

¹⁴ 47 CFR §§ 76.65(b)(1).

¹⁵ *Good Faith Order*, 15 FCC Rcd at 5462-64, paras. 40-46.

¹⁶ Verified Complaint of DIRECTV, LLC and AT&T Services, Inc. for the Stations Groups’ Failure to Negotiate in Good Faith, MB Docket No. 19-169 (filed Jun. 18, 2019).

¹⁷ *See generally AT&T Order*, 34 FCC Rcd 10367.

¹⁸ *Id.* at 10368-69, notes 10-11.

¹⁹ Letter from Sean A. Lev, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 12, 2019) (filed in MB Docket No. 19-168).

²⁰ HSH provided consolidated financial information covering the majority of the last three years of operation of its seven TV stations to the Media Bureau. That submission contained sensitive and confidential financial and commercial information and was filed under a request for confidentiality pursuant to Sections 0.457(d) and 0.459 of the Commission’s rules, 47 CFR §§ 0.457(b) and 0.459.

III. TERMS OF AGREEMENT

7. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction**. HSH agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations**. This Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

10. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, HSH agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding, formal or informal, or take any action on its own motion concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any proceeding concerning, or to set for hearing, the question of HSH's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations, or to deny any renewal, modification, assignment or transfer of any such licenses or authorizations.

11. **Admission of Liability**. HSH admits, in express reliance on the provisions of Paragraph 10 herein, and in order to minimize the expenditure of public resources, that its actions with respect to its negotiations with AT&T referenced in the Complaint and described in Paragraph 4 herein violated the good faith negotiation requirements of the Retransmission Consent Rules.

12. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, HSH shall appoint its in-house legal counsel to serve as Compliance Officer and to discharge the duties set forth below for the duration of the Compliance Plan. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that HSH complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer, prior to assuming his or her duties, shall have specific knowledge of the Retransmission Consent Rules as they are currently in effect. HSH must notify the Chief, Policy Division, Media Bureau of the Compliance Officer's name and contact information within ten (10) business days of his or her appointment. HSH must also notify the Chief, Policy Division, Media Bureau within ten (10) business days of any change of Compliance Officer or of the Compliance Officer's contact information.

13. **Compliance Plan**. HSH agrees that it shall, within sixty (60) calendar days after the Effective Date, develop, implement, and maintain a Compliance Plan that is designed to ensure future compliance with the Retransmission Consent Rules and the terms and conditions of this Consent Decree, including the following:

- a) **Operating Procedures**. HSH shall establish Operating Procedures that all Covered Employees must follow to help ensure HSH's compliance with the Retransmission Consent Rules and this

Compliance Plan. HSH's Operating Procedures shall include, at a minimum, the following provisions:

- i) HSH shall engage independent counsel familiar with the Retransmission Consent Rules to advise it in connection with HSH's retransmission consent negotiations. Such advice shall include periodic updates on developments in the rules and their implementation as well as updates on standard industry practices regarding retransmission consent.
 - ii) HSH shall consult with independent counsel during retransmission consent negotiations for the purpose of ensuring HSH's compliance with its obligation to bargain in good faith under the Retransmission Consent Rules.
 - iii) The independent counsel required by this Paragraph shall be someone other than the Compliance Officer. Nothing in this Paragraph prohibits HSH from also engaging and consulting with the Compliance Officer.
- b) **Compliance Manual.** The Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall set forth a comprehensive overview of Retransmission Consent Rules, together with the Operating Procedures that Covered Employees shall follow to help ensure HSH's compliance with those Rules and the Compliance Plan. HSH shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. HSH shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- c) **Compliance Training Program.** HSH shall establish and implement a Compliance Training Program to ensure compliance with the Retransmission Consent Rules and the Compliance Plan. As part of the Compliance Training Program, Covered Employees shall be advised of HSH's obligation to report any noncompliance under Paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program (as applicable to their job duties) within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. HSH shall repeat compliance training on an annual basis, and it shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- d) **Hotline.** The Compliance Officer shall maintain a hotline for Covered Employees to call the Compliance Officer to obtain advice on compliance with the Compliance Plan and to report violations of the Compliance Plan.

14. **Reporting Noncompliance.** Beginning on the Effective Date, HSH shall report any noncompliance with the Retransmission Consent Rules, or the terms and conditions of this Consent Decree, within thirty (30) calendar days after discovery of such noncompliance. Such reports shall be titled "Report of Noncompliance," and shall include a detailed explanation of: (i) each instance of noncompliance and the circumstances under which it occurred; (ii) a detailed description of the time and manner in which the noncompliance was discovered, the name(s) and title(s) of the person(s) by whom it was discovered, and the names and titles of all HSH employees or agents who were aware of the activity prior to the discovery that it was noncompliant; (iii) the steps that HSH has taken or will take to remedy such noncompliance; (iv) the schedule on which such remedial actions will be taken; (v) the steps that HSH has taken or will take to prevent the recurrence of any such noncompliance; and (vi) the schedule on which such preventive actions will be taken. For each instance of noncompliance, the report shall identify the specific statutory requirement, rule, or Consent Decree term with which HSH believes it failed to comply. Each Report of Noncompliance shall include a certification by the Compliance Officer stating

that the Compliance Officer has personal knowledge that the report is complete and accurate. This certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²¹ All reports of noncompliance shall be submitted to the Chief, Policy Division, Media Bureau, Federal Communications Commission, at 445 12th Street, SW, Washington, DC 20554 or to an address that the Commission may in the future designate for receipt of United States mail, and submitted electronically to Maria Mullarkey at Maria.Mullarkey@fcc.gov and Lyle Elder at Lyle.Elder@fcc.gov.

15. **Compliance Reports.** HSH shall file confidential Compliance Reports with the Commission six (6) calendar months after the Effective Date and every six (6) months thereafter, with the final report to be submitted one (1) month after the Termination Date. Notwithstanding the Termination Date, this requirement shall remain in effect until the final report is submitted.

- a) Each Compliance Report shall include:
 - i. a detailed description of HSH's efforts during the relevant period (ending one week before the filing date of each report) to comply with the terms and conditions of this Consent Decree, and the Retransmission Consent Rules;
 - ii. a list of MVPDs with which the HSH stations has negotiated retransmission consent at any time during the relevant period, identifying the status of the negotiation or the date on which the negotiation ended, as well as the date on which any then-current carriage agreement was or is scheduled to expire; and
 - iii. a certification by the Compliance Officer that HSH has established, implemented, and is maintaining the Compliance Plan and is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree. The certification shall be accompanied by a statement explaining the basis for such certification and be in the form set forth in Section 1.16 of the Rules²² and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- b) If the Compliance Officer cannot provide the certification described in Paragraph 15(a)(iii), the Compliance Officer, as an agent of and on behalf of HSH, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully each instance of noncompliance and the steps that HSH has taken or will take to remedy such noncompliance. Provision of such an explanation in a Compliance Report is in addition to the submission of a more detailed Report (or Reports) of Noncompliance required pursuant to Paragraph 14, and which must be submitted on the schedule described in that paragraph.
- c) All Compliance Reports shall be submitted to the Chief, Policy Division, Media Bureau, Federal Communications Commission, at 445 12th Street, SW, Washington, DC 20554 or to an address that the Commission may in the future designate for receipt of United States mail, and submitted electronically to Maria Mullarkey at Maria.Mullarkey@fcc.gov and Lyle Elder at Lyle.Elder@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 12-15 shall expire thirty-six (36) months after the Effective Date.

²¹ 47 CFR § 1.16.

²² 47 CFR § 1.16.

17. **Civil Penalty.** HSH will pay a Civil Penalty to the United States Treasury in the amount of One Hundred Thousand Dollars (\$100,000) due in accordance with the payment schedule provided in Paragraph 18 of this Consent Decree.²³ HSH acknowledges and agrees that, upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).²⁴ HSH shall send electronic notification of payment to Maria Mullarkey at Maria.Mullarkey@fcc.gov, copying Lyle Elder at Lyle.Elder@fcc.gov, on the date said payment is made. The payment must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system), or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. **Payment Plan.** HSH will pay the \$100,000 Civil Penalty as described in Paragraph 17 of the Consent Decree in accordance with the following payment schedule:

²³ This payment amount reflects the Bureau’s consideration of the financial information provided by HSH. *See supra* note 15.

²⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

²⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

90 Days after the Effective Date of the Consent Decree	\$25,000
120 Days after the Effective Date of the Consent Decree	\$25,000
150 Days after the Effective Date of the Consent Decree	\$25,000
180 Days after the Effective Date of the Consent Decree	\$25,000

19. **Waivers.** As of the Effective Date, HSH waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. HSH specifically waives any and all rights it may have to appeal, collaterally attack or otherwise challenge the Consent Decree or the Adopting Order based on the ultimate outcome of the AT&T Order. HSH shall retain the right to challenge Commission interpretation of the Consent Decree. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither HSH nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and HSH shall waive any statutory right to a trial *de novo*. HSH hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁷ relating to the matters addressed in this Consent Decree. Notwithstanding any provision of the Consent Decree or the Adopting Order, this Consent Decree shall be void and of no further force and effect if the condition specified in Paragraph 17 is not satisfied by HSH within the time period specified, or if the conditions specified in Paragraph 10 are not satisfied by the Bureau within the time period specified.

20. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

22. **Subsequent Rule or Order.** The Parties agree that, if any provision of the Consent Decree conflicts with any subsequent Communications Laws (except an Order specifically intended to revise the terms of this Consent Decree to which HSH does not expressly consent), that provision will be superseded by such Communications Laws. Notwithstanding the foregoing, the parties agree that no provision of this Consent Decree will be superseded or otherwise modified based on action taken either by the Commission or a court on review of the AT&T Order.

23. **Successors and Assigns.** HSH agrees that the provisions of this Consent Decree shall be binding on its subsidiaries, affiliates, successors, assigns, and transferees.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters addressed in the AT&T Order and the Investigation.

25. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

²⁷ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

26. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

27. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

28. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Michelle M. Carey
Chief, Media Bureau
Federal Communications Commission

Armstrong Williams
Owner/Manager
Howard Stirk Holdings, LLC
Howard Stirk Holdings II, LLC

Date: _____

Date: _____