

# WILLKIE FARR & GALLAGHER LLP

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October 10, 2017

## VIA HAND DELIVERY AND ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-A325  
Washington, DC 20554

ACCEPTED/FILED

OCT 10 2017

Federal Communications Commission  
Office of the Secretary

DOCKET FILE COPY ORIGINAL

Re: ***Liberman Broadcasting, Inc. v. Comcast Corporation, File No. CSR-8922-P,  
MB Docket No. 16-121***

Dear Ms. Dortch:

On behalf of Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast"), this letter updates the Commission on a development relevant to the above-captioned program carriage complaint proceeding.<sup>1</sup> In letters dated September 27, 2017, Liberman Broadcasting, Inc. and LBI Media, Inc. (together, "LBI") informed Comcast that LBI has elected must-carry status for the three Estrella TV station signals in the Houston, Denver, and Salt Lake City markets for the upcoming three-year cycle. (The correspondence is attached in Appendix A.) Accordingly, pursuant to its obligations under the Commission's must-carry rules, Comcast will resume carrying those stations on January 1, 2018.

LBI's 2014 election of retransmission consent for these stations and demand for compensation from Comcast was the basis of the parties' negotiations that gave rise to LBI's complaint.<sup>2</sup> The Bureau's Order dismissing that complaint appropriately rejected LBI's argument that broadcasters had the benefit of both the comprehensive must-carry/retransmission consent regime and program carriage remedies.<sup>3</sup> Among other things, the Bureau found that a determination that broadcasters that elected retransmission consent could also invoke program carriage would "conflict with and significantly undercut the [statutory] must carry/retransmission consent election process."<sup>4</sup> And the Order specifically contemplated that LBI could elect must-

<sup>1</sup> See 47 C.F.R. § 76.6(a)(6).

<sup>2</sup> See *Liberman Broadcasting, Inc. v. Comcast Corp.*, Memorandum Opinion and Order, 31 FCC Rcd. 9551 ¶ 8 (MB 2016) ("Order").

<sup>3</sup> *Id.* ¶¶ 13-19.

<sup>4</sup> *Id.* ¶ 18.

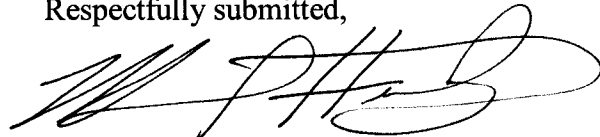
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carry in the future if it sought to compel carriage (as it had in previous cycles).<sup>5</sup> The Bureau's Order was correct and should be affirmed for all the reasons Comcast has previously explained in the record.<sup>6</sup> However, with LBI's recent must-carry election for the stations at issue in this case, LBI's pending petition for reconsideration of the Order also now may be dismissed as moot.<sup>7</sup>

Please do not hesitate to contact me with any questions.

Respectfully submitted,



Michael D. Hurwitz  
*Counsel for Comcast Corporation and  
Comcast Cable Communications, LLC*

cc (via email): Markham Erickson, Steptoe & Johnson, LLP (counsel for LBI)  
Jay Cohen, Paul, Weiss, Rifkind, Wharton & Garrison LLP (counsel for Comcast)  
Mary Beth Murphy, Media Bureau  
Martha Heller, Media Bureau  
Raelynn Remy, Media Bureau  
Susan Aaron, OGC

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<sup>5</sup> *Id.* ¶ 19.

<sup>6</sup> *See Liberman Broadcasting, Inc. v. Comcast Corp.*, Opposition to Petition for Reconsideration, MB Docket No. 16-121 (filed Oct. 6, 2016).

<sup>7</sup> Although LBI's election letters to Comcast asserted that its must-carry election "does not alter [its] rights" with regard to its pending complaint against Comcast in this proceeding, *see* App. A, LBI is mistaken. As the Commission has held, a broadcaster's must-carry election is final and, once made, the broadcaster "cannot unring the election bell." *Radio Perry, Inc. (WPGA-TV, Perry, Georgia) v. Cox Communications, Inc.*, 26 FCC Rcd. 16392 ¶ 6 (MB 2011) ("The Commission's rules do not contemplate changing or disaffirming an election once made, and as the Cable Services Bureau has said in the past, to permit stations to change a valid election would 'lead to administrative chaos.'" (citing and quoting *Cablevision Systems Corp.*, Memorandum Opinion and Order, 12 FCC Rcd. 13121 (CSB 1996))); *see also* Order ¶ 15 (discussing the statutory framework for the binary must-carry/retransmission consent election process). Moreover, this development is also relevant to the Bureau's inquiry about LBI's white area satellite feed. LBI has argued that any claim related to its satellite feed should *also* cover the broadcast signals in Houston, Denver, and Salt Lake City. *See* Letter from Markham C. Erickson, Counsel for LBI, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-121, at 8, 28 (filed May 15, 2017). That argument is meritless, as Comcast has previously explained. *See* Letter from Michael D. Hurwitz, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-121, at 1-2 (filed May 19, 2017); *see also* Letter from Michael D. Hurwitz, Counsel for Comcast, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-121, at 5 (filed May 15, 2017). But with LBI's recent must-carry election for these three stations, now that argument too is moot.

# **APPENDIX A**



**LBI MEDIA, INC.**

1845 Empire Avenue, Burbank, CA 91504  
Phone (818) 729-5300, fax (818) 729-5308

September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable  
8590 West Tidwell Rd  
Houston, TX 77040

Re: **Must-Carry Election**  
**KZJL, Houston, TX**  
**Houston DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KZJL, licensed to Houston, Texas, elects must-carry status with respect to all your cable system(s) serving the Houston DMA for the period beginning January 1, 2018 and ending December 31, 2020.

This will further advise that, pursuant to § 76.57(e) of the FCC rules, our station elects to be carried on cable channel 3 on your system(s), the channel on which we were last carried on your system(s).

We will be pleased to cooperate with you to help provide the best possible service for your subscribers. We note that the must-carry election contained in this letter does not alter our rights with regard to our pending complaint against Comcast before the FCC that Comcast violated the FCC's program carriage rules and the conditions of the *Comcast-NBCU Order*. Please do not hesitate to contact me if you have any questions on this matter.

Very truly yours,

/s/

Cathy Lewis  
SVP, Content Distribution and Affiliate Sales  
LBI Media, Inc., parent company of licensee

cc: Station Public Inspection File

*Los Angeles – KRCA-TV KBUE-FM KBUA-FM KHJ-AM KWIZ-FM KRQB-FM KVN-AM  
Houston – KZJL-TV KTJM-FM KJOJ-AM/FM KQK-FM KIOX-FM KXGJ-FM KNTE-AM KEYH-AM  
Dallas – KMPX-TV KNOR-FM KTCY-FM KZZA-FM KZMP-AM/FM KBOC-FM  
ESTRELLA -TV San Diego - KSDX-TV Phoenix - KVPA-TV Chicago - WESV-TV Denver - KETD-TV*



**LBI MEDIA, INC.**

1845 Empire Avenue, Burbank, CA 91504  
Phone (818) 729-5300, fax (818) 729-5308

September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable Communications, Inc.  
Comcast Center, 1701 JFK Blvd.  
Philadelphia, PA 19103

Re: **Must-Carry Election**  
**KZJL, Houston, TX**  
**Houston DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KZJL, licensed to Houston, Texas, elects must-carry status with respect to all your cable system(s) serving the Houston DMA for the period beginning January 1, 2018 and ending December 31, 2020.

This will further advise that, pursuant to § 76.57(e) of the FCC rules, our station elects to be carried on cable channel 3 on your system(s), the channel on which we were last carried on your system(s).

We will be pleased to cooperate with you to help provide the best possible service for your subscribers. We note that the must-carry election contained in this letter does not alter our rights with regard to our pending complaint against Comcast before the FCC that Comcast violated the FCC's program carriage rules and the conditions of the *Comcast-NBCU Order*. Please do not hesitate to contact me if you have any questions on this matter.

Very truly yours,

/s/

Cathy Lewis  
SVP, Content Distribution and Affiliate Sales  
LBI Media, Inc., parent company of licensee

cc: Station Public Inspection File

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Phone (818) 729-5300, fax (818) 729-5308

September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable  
8000 East Iliff Ave  
Denver, CO 80231

Re: **Must-Carry Election**  
**KETD, Castle Rock, CO**  
**Denver DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KETD, licensed to Castle Rock, Colorado, elects must-carry status with respect to all your cable system(s) serving the Denver DMA for the period beginning January 1, 2018 and ending December 31, 2020.

This will further advise that, pursuant to § 76.57(e) of the FCC rules, our station elects to be carried on cable channel 53 on your system(s), the channel on which we were last carried on your system(s).

We will be pleased to cooperate with you to help provide the best possible service for your subscribers. We note that the must-carry election contained in this letter does not alter our rights with regard to our pending complaint against Comcast before the FCC that Comcast violated the FCC's program carriage rules and the conditions of the *Comcast-NBCU Order*. Please do not hesitate to contact me if you have any questions on this matter.

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/s/

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September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable  
1605 Grand Ave, Ste 1  
Glenwood Springs, CO 81601

Re: **Must-Carry Election**  
**KETD, Castle Rock, CO**  
**Denver DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KETD, licensed to Castle Rock, Colorado, elects must-carry status with respect to all your cable system(s) serving the Denver DMA for the period beginning January 1, 2018 and ending December 31, 2020.

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Cathy Lewis  
SVP, Content Distribution and Affiliate Sales  
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September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable  
249 Warren Ave, Ste 250  
Silverthorne, CO 80498

Re: **Must-Carry Election**  
**KETD, Castle Rock, CO**  
**Denver DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KETD, licensed to Castle Rock, Colorado, elects must-carry status with respect to all your cable system(s) serving the Denver DMA for the period beginning January 1, 2018 and ending December 31, 2020.

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September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable  
434 Kimbark St  
Longmont, CO 80501

Re: **Must-Carry Election**  
**KETD, Castle Rock, CO**  
**Denver DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KETD, licensed to Castle Rock, Colorado, elects must-carry status with respect to all your cable system(s) serving the Denver DMA for the period beginning January 1, 2018 and ending December 31, 2020.

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September 27, 2017

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Comcast Cable Communications, Inc.  
Comcast Center, 1701 JFK Blvd.  
Philadelphia, PA 19103

Re: **Must-Carry Election**  
**KETD, Castle Rock, CO**  
**Denver DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KETD, licensed to Castle Rock, Colorado, elects must-carry status with respect to all your cable system(s) serving the Denver DMA for the period beginning January 1, 2018 and ending December 31, 2020.

This will further advise that, pursuant to § 76.57(e) of the FCC rules, our station elects to be carried on cable channel 53 on your system(s), the channel on which we were last carried on your system(s).

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September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable  
9602 South 300 West  
Sandy, UT 84070

Re: **Must-Carry Election**  
**KPNZ, Ogden, UT**  
**Salt Lake City DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KPNZ, licensed to Ogden, Utah, elects must-carry status with respect to all your cable system(s) serving the Salt Lake City DMA for the period beginning January 1, 2018 and ending December 31, 2020.

This will further advise that, pursuant to § 76.57(e) of the FCC rules, our station elects to be carried on cable channel 8 on your system(s), the channel on which we were last carried on your system(s).

We will be pleased to cooperate with you to help provide the best possible service for your subscribers. We note that the must-carry election contained in this letter does not alter our rights with regard to our pending complaint against Comcast before the FCC that Comcast violated the FCC's program carriage rules and the conditions of the *Comcast-NBCU Order*. Please do not hesitate to contact me if you have any questions on this matter.

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SVP, Content Distribution and Affiliate Sales  
LBI Media, Inc., parent company of licensee

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September 27, 2017

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Comcast Cable Communications, Inc.  
Comcast Center, 1701 JFK Blvd.  
Philadelphia, PA 19103

Re: **Must-Carry Election**  
**KPNZ, Ogden, UT**  
**Salt Lake City DMA**

To Whom It May Concern:

Please be advised that, pursuant to Section 76.64(f) of the rules of the Federal Communications Commission (FCC), the licensee of television station KPNZ, licensed to Ogden, Utah, elects must-carry status with respect to all your cable system(s) serving the Salt Lake City DMA for the period beginning January 1, 2018 and ending December 31, 2020.

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/s/

Cathy Lewis  
SVP, Content Distribution and Affiliate Sales  
LBI Media, Inc., parent company of licensee


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## CERTIFICATE OF SERVICE

I, Alex J. Moyer, certify that on this 10<sup>th</sup> day of October 2017, I caused a true and correct copy of the foregoing letter, filed with the Commission by hand and electronically this day, to be served by overnight mail and electronic mail on the following:

Markham C. Erickson  
Christopher Bjornson  
STEPTOE & JOHNSON LLP  
1330 Connecticut Ave, N.W.  
Washington, DC 20036  
(202) 429-3000  
*Counsel to Liberman Broadcasting, Inc.  
and LBI Media, Inc.*



Alex J. Moyer

October 10, 2017