

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of:	)	
	)	CSR-8920-N
United Communications Corporation	)	MB Docket No. 16-54
KEYC-TV (Fac. ID 68853)	)	
Mankato, Minnesota	)	
	)	
Petition for Waiver of Sections 76.92(f)	)	
and 76.106(a) of the Commission's Rules	)	

To: Chief, Media Bureau

**OPPOSITION OF KAAL-TV, LLC TO PETITION FOR WAIVER**

KAAL-TV, LLC, the licensee of KAAL(TV), Austin, Minnesota (FCC Facility ID No. 18285) ("KAAL"), by its attorneys, hereby opposes the above-captioned Supplement to Petition for Special Relief ("Petition") submitted by United Communications Corporation ("United"), the licensee of KEYC-TV, Mankato, Minnesota (FCC Facility ID No. 68853) ("KEYC"). The broad waivers of two FCC rules sought by United are for the purpose of eliminating significantly viewed status for four television stations (*i.e.* terminating local carriage on cable and satellite) in the Mankato DMA, so that local viewers will be denied access to the programming of these stations, which they have been watching for many years. Not only would grant of these waivers undermine the Commission's system for local viewership of television stations, likely opening the floodgates to similar waiver requests, but such a grant would be anti-competitive by foreclosing current broadcast competition in the Mankato market, to the sole benefit of KEYC. Clearly, the public interest requires denial of these waivers.

For decades, local Mankato viewers have been able to access the programming of the four television stations which are the subject of the Petition. They are: KAAL (ABC network programming), CBS owned WCCO-TV, Minneapolis, Minnesota (CBS network programming);

Fox owned KMSP-TV, Minneapolis (Fox network programming) and Fox owned WFTC(TV), Minneapolis, Minnesota (My Network programming).<sup>1</sup> United has clogged the Commission's files with nearly 140 pages of arguments, claims and "studies," all of which fail the standards for declassification of these stations from significantly viewed status. Indeed, the very Nielsen viewership studies which would be the most important basis for a valid effort to declassify these stations support the proposition that they enjoy considerable over-the-air viewership. Therefore, lacking facts, United turns to waiver requests.

United claims, repeatedly, that the four stations are viewed over the air because of TV translator services and it offers its view of propagation to suggest that the stations simply cannot be seen over the air, except by TV translators. However, the Commission's rule specifically does not rely on propagation studies; it requires viewership surveys (*i.e.*, Nielsen), which United cannot provide. Therefore, United wants to rewrite the fundamental substance of the FCC's local viewership policies with self-serving waivers.<sup>2</sup> United should be required to initiate a rulemaking proceeding if it believes that such wholesale revisions to the Commission's rules are warranted.

United also alleges that TV translator service cannot be the basis for viewership, relying on a decision which is 35 years old, from the infancy of the TV translator service. (Petition, p.

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<sup>1</sup> KAAL is wholly owned by Hubbard Broadcasting, Inc. ("HBI"). KSTP-TV, LLC, St. Paul, Minnesota ("KSTP"), is another wholly owned subsidiary of HBI. KSTP is the ABC affiliate for the Twin Cities and is seen in the Mankato DMA on a significantly viewed basis, although United has not made it a party to its Petition.

<sup>2</sup> The Commission has stated that it "must reject showings . . . because there are no in-tab households for one of the survey periods and the claimed average is solely the result of one survey period. . . ." See *WTNH Broadcasting, Inc.*, 27 FCC Rcd 15885, 15902 (MB 2012); *Chesapeake Television Licensee, LLC*, 30 FCC Rcd 6455, 6462 (MB 2010). However, it is not clear from United's evidence if all of the communities listed had an in-tab household for each of the survey periods. See, e.g., *New Ulm Telecom, Inc.*, Opposition to Special Relief, at 2, MB Docket No. 16-41 (March 31, 2016).

50) However, this United assertion is far from clear. In much more recent times, the Commission has modified a television market to include a station which, because of distance, likely could not be viewed directly over the air.<sup>3</sup>

Moreover, United fails to note that some, or all, of the TV translator services at issue are provided by a local non-profit cooperative association, meeting the over-the-air broadcasting needs of local residents. In support of the public interest in localism, the Commission should defer to the judgment of local residents that receipt of the signals of these stations serves their needs. Cutting them off likely would deprive Mankato of critical news and weather information.

United generally argues that granting it broad waivers would be in keeping with its network non-duplication rights. However, according to its website, KEYC is an affiliate of Fox and CBS.<sup>4</sup> Even if the Commission is inclined to eviscerate the relevant rules, KEYC could not exercise network non-duplication rights against KAAL or WFTC, which carry network services not broadcast by KEYC. Accordingly, the Commission should not take action vis-à-vis KAAL as raised by a station that currently cannot bring ABC programming to the affected households.

Finally, and most important, the Commission needs to act in the public interest. If these waivers are granted, there will be three obvious outcomes: (1) viewers in Mankato will lose access to broadcast programming which they currently enjoy; (2) many other licensees are likely to rely on such grants to seek similar waivers, upsetting the long-standing regulatory system; and (3) KEYC will have foreclosed current broadcast competition in the market from stations that

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<sup>3</sup> See *Mapale LLC*, 24 FCC Rcd. 8366 (MB 2009). To be sure, the applicable standards are not identical. However, the distance from the WGEN-TV transmitting antenna in Key West, Florida, to downtown Miami would be approximately 160 miles. It is very likely that local over-the-air Miami viewership of WGEN-TV would be from its commonly owned LPTV station, WGEN-LD, Miami, Florida.

<sup>4</sup> See [www.keyc.com](http://www.keyc.com).

local residents want to see. KAAL submits that these outcomes are contrary to the public interest, and therefore, the waiver requests must be denied. United should be required to abide by the Commission's rules as they are written because its request for waivers do not meet the strict standards which apply.<sup>5</sup>

Respectfully submitted,

KAAL-TV, LLC

/s/ F. William LeBeau

Charles R. Naftalin

F. William LeBeau

HOLLAND & KNIGHT LLP

800 17<sup>th</sup> Street, N.W., Suite 1100

Washington, D.C. 20006

Tel: 202-955-3000

Fax: 202-955-5564

August 31, 2017

*Its Attorneys*

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<sup>5</sup> It is well-settled that the party petitioning for a waiver bears a heavy burden of showing good cause: “[an] applicant [for a waiver] faces a high hurdle even at the starting gate.” *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). “The agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operations.” *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1165, 1166 (D.C. Cir. 1990).

## CERTIFICATE OF SERVICE

I, Judy Norris, a legal secretary with Holland & Knight, LLP, hereby certify that on August 31, 2017, a copy of the foregoing *Opposition of KAAL-TV, LLC to Petition for Waiver* was deposited in the U.S. mail, postage prepaid, addressed to the following\*:

CC VIII Operating LLC  
12405 Powerscourt Drive  
St. Louis, MO 63131

Cable Franchise Authority  
City of Springfield  
2 East Central  
Springfield, MN 56087

Cable Franchise Authority  
St. James City Hall  
124 Armstrong Blvd. South  
P.O. Box 70  
St. James, MN 56081

Barry Wood  
Ronald Maines  
Wood, Martin & Hardy, PC  
3300 Fairfax Drive, Suite 202  
Arlington, Virginia 22201

Consolidated Communications  
221 East Hickory Street  
Mankato, Minnesota 56001

Cable Franchise Authority  
City of New Ulm  
100 N. Broadway Street  
New Ulm, MN 56073

Midcontinent Communications  
3901 North Louise Avenue  
Sioux Fall, South Dakota 57107

KIMT Television  
112 N Pennsylvania Avenue  
Mason City, Iowa 50401

Fort Randall Cable Systems, Inc.  
1700 Technology Drive NE  
Suite 100  
Willmar, MN 56201

Joseph M. Di Scipio Fox  
Television Stations, LLC  
400 N. Capitol Street, #890  
Washington, D.C. 20001

Stephen R. Ross, Counsel for  
New Ulm Telecom  
1134 E. Lexington Drive, #5  
Glendale, California 91206

Mediacom Minnesota LLC  
One Mediacom Way  
Mediacom Park, New York  
10918

Cable Franchise Authority  
City of North Mankato  
1001 Belgrade Avenue North  
Mankato, MN 56002

Comcast  
One Comcast Center  
Philadelphia, PA 19103

John W. Bagwell  
51 West 52<sup>nd</sup> Street  
New York, NY 10019

Cable Franchise Authority  
Madelia City Hall  
116 West Main Street  
Madelia, MN 56062

Cable Franchise Authority  
Amboy City Hall  
244 East Maine Street  
P.O. Box 250  
Amboy, MN 56010

Cable Franchise Authority  
City of Mankato  
10 Civic Center Plaza  
Mankato, MN 56001

Cable Franchise Authority  
City of Madison Lake  
525 Main Street  
Madison Lake, MN 56063

Cable Franchise Authority  
City of Hanska  
P.O. Box 91  
Hanska, MN 56041

Cable Franchise Authority  
Good Thunder City Hall  
130 South Ewing Street  
P.O. Box 97  
Good Thunder, MN 56037

Cable Franchise Authority Lake  
Crystal City Hall  
100 East Robinson Street  
P.O. Box 86  
Lake Crystal, MN 56055

Cable Franchise Authority  
City of Sleepy Eye  
200 Main Street East  
Sleepy Eye, MN 56085

David Sunderman, CEO  
Cooperative Television Association  
of Southern Minnesota  
20946 547 Avenue  
Mankato, MN 56001

DirecTV  
2260 E. Imperial Hwy.  
El Segundo, CA 90245

Jeremy M. Berg  
Berens, Rodenberg & O'Connor,  
Chtd.  
P. O. Box 428  
219 N. Broadway, Suite C  
New Ulm, MN 56073

Paul J. Feldman  
Fletcher, Heald & Hildreth, PLC  
1300 No. 17<sup>th</sup> St., 11<sup>th</sup> Floor  
Arlington, VA 22209

Cable Franchise Authority  
St. James City Hall  
124 Armstrong Blvd. South  
P. O. Box 70  
St. James, MN 56081

\*A copy of this Opposition also  
has been submitted electronically  
in MM Docket No. 16-54.

/s/ \_\_\_\_\_  
Judy Norris