

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

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

**MOTION TO STRIKE AND OPPOSITION TO SUPPLEMENT TO  
PETITION FOR SPECIAL RELIEF**

**New Ulm Telecom, Inc.**

September 7, 2017

**Introduction.**

On behalf of New Ulm Telecom, Inc. ("NU-Telecom"), the undersigned is filing this Motion to Strike and Opposition (the "NU-Telecom Motion") to the Supplement to Petition for Special Relief filed by United Communication Corporation, the licensee of KEYC-TV, Mankato, Minnesota ("KEYC Supplement"). KEYC has a dual affiliation with CBS Television and Fox Network. The initial Petition for Special Relief (the "Petition") seeks to prove, using Nielsen Data as set forth in Exhibit 1 of the Petition, that in a number of communities, certain television stations originally included in the 1972 list of significantly viewed signals on a county-wide basis are no longer significantly viewed in various communities served by NU-Telecom. NU-Telecom's opposition to the Petition is set forth in its March 31, 2016 Opposition to Petition for Special Relief ("NU-Telecom Opposition") and NU-Telecom asks the Commission to consider the arguments in the NU-Telecom Opposition in its review of this NU-Telecom Motion.

The Petition claims the lack of significantly viewed status of WCCO -TV (CBS), KMSP-TV (Fox) and WFTC all in the Minneapolis- St. Paul DMA, and KAAL, the Austin DMA (a Station NU-Telecom does not carry) in a number of communities, using the methodology in Section 76.54 (b) and (c). Nielsen provided the data for these surveys as requested by KEYC. This, of course, is the standard methodology for seeking removal of significantly viewed status for specific communities from the list originally established in 1972 and, importantly, is the sole and standard basis for this type of special relief petition pursuant to Section 76.7 of the

Commission's Rules. KEYC filed its Petition and reply in accordance with the rules and procedures noted above. NU-Telecom and several other parties filed oppositions to the Petition. The KEYC Supplement raises a completely different basis for finding that the stations in the Brown County communities served by NU-Telecom are no longer significantly viewed. Its sole argument is that the basis for off-air viewing is not the stations from the Twin Cities noted above but translator stations which KEYC states are included in the Nielsen data for these communities. The essence of this argument is that the three Twin City stations and KAAL-Austin signal contours cannot, in most cases, possibly encompass these communities. This is a new argument not raised in the Petition nor did KEYC indicate that it asked Nielsen if it was possible to refine its surveys to exclude translator viewings at the time it requested the survey information and filed the Petition.

Procedurally, Special Relief Rule 76.7 (c) (1) dealing with replies by the Petitioner (in this case KEYC) states: "Unless expressly permitted by the Commission, reply comments and replies to an answer shall not contain new matters." Clearly, the KEYC Supplement presents new arguments relating to the viewability of the Twin Cities and Austin Stations - an argument it could have and should have raised in its original Petition. Additionally, pursuant to Section 76.7 (d) Motions: "Except as provided in this Section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted." KEYC has made no showing of extraordinary circumstances and, therefore, the KEYC Supplement which raise new arguments and is an additional pleading should be dismissed and stricken from the record.

Substantively, the KEYC Supplement does not provide any Nielsen audience data to support its argument regarding lack of over the air viewership in the communities as required by Section 76.54 (b) and (c). KEYC simply speculates that the signal contours of these stations do not encompass these communities and, therefore, the only explanation is carriage by translators operated by Cooperative Television of Southern Minnesota. These speculations are not consistent with the Commission's rules. The use of audience surveys is the only acceptable and lawful method of deciding whether a station is no longer viewable for determining significantly viewed status. Importantly, it is inappropriate for the Bureau or, for that matter, the Commission, to change the manner of deciding these significantly cases without submitting the issue to a Notice of Proposed Rulemaking.

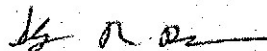
The Bureau has before it the KEYC Petition and its Consolidated Reply, NU-Telecom's Opposition and the oppositions of other parties. That should be the basis for review of KEYC's Petition. Please note that the NU-Telecom Opposition addressed KEYC's claims regarding: WCCO's lack of significantly viewed status in Hanska, Minnesota; KMSP's lack of significantly viewed status in New Ulm; and requested that, in the event the Commission finds KMSP is not significantly viewed in New Ulm, a waiver would be appropriate for the reasons set forth in the NU-Telecom Opposition. With respect to WFTC, the Petition failed to demonstrate significantly viewed status in any of the communities served by NU-Telecom.

Conclusion.

For the foregoing reasons, NU-Telecom asks the Commission to grant its Motion to Strike and not consider the KEYC Supplement. Action on the Petition should be considered based on the earlier pleadings of KEYC and, as set forth in the NU-Telecom Opposition, the Commission should deny the Petition. In the alternative, NU-Telecom respectfully submits that the public interest would be served by granting a waiver allowing it to continue carriage of KMSP its entirety in the City of New Ulm, MN.

Respectfully submitted

NEW ULM TELECOM, INC.



By: \_\_\_\_\_

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Date: September 7, 2017

Its Counsel

## CERTIFICATE OF SERVICE

I, Emily Hiebeler, Legal Assistant for Stephen R. Ross, Esq. hereby certify that on September 7, 2017, a copy of the foregoing "Motion to Strike and Opposition to Supplement to Petition for Special Relief" was deposited in the U.S. Mail, postage prepaid, addressed to the following:

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Channel 29 Stations WFTC and  
KMSP-TV  
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Cable Franchise Authority  
City of North Mankato  
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September 7, 2017