

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

In the Matter of)	
)	
Bellizzi Broadcasting Network, Inc.)	CSR-8837-M
Station WEYW-LP, Key West, Florida)	MB Docket No. 13-244
)	
Facility ID No. 130765)	
)	

To: Office of the Secretary

APPLICATION FOR REVIEW

Bellizzi Broadcasting Network, Inc. (“Bellizzi”), licensee of Station WEYW-LP (Channel 19), Key West, Florida (“WEYW”), by its attorney, pursuant to Section 1.115 of the Commission’s rules, hereby seeks Commission review of that *Order on Reconsideration* (the “*Order*”),¹ issued by the Commission’s Media Bureau on April 28, 2015.² The *Order* denied Bellizzi’s Petition for Reconsideration of a *Memorandum Opinion and Order* (the “*MO&O*”) denying the Complaint filed by Bellizzi on behalf of WEYW against Comcast Cable Communications, LLC (“Comcast”), concluding that WEYW was not a “qualified” low power television (“LPTV”) station under the FCC’s rules. The *Order’s* conclusion is legally incorrect and, to the extent that the decision follows existing FCC policy or precedent, that policy or precedent should be overturned. The Commission should reverse the Media Bureau’s conclusions and grant Bellizzi’s Complaint. In support of its position, Bellizzi submits the following:

¹ 30 FCC Rcd 3778 (MB 2015).

² 28 FCC Rcd 16761 (MB 2013).

The relevant facts in this matter have never been in dispute. What is in dispute is the Bureau's interpretation of the relevant law. Under certain circumstances, cable systems are required by the Communications Act of 1934, as amended (the "Act") and the FCC's rules to carry "qualified" LPTV stations as part of their channel lineups.³ Bellizzi filed a Complaint against Comcast because the cable operator refused to carry WEYW as a must-carry station on its cable system serving Key West and other communities in Monroe County. WEYW's Complaint requested the Media Bureau to direct Comcast to treat WEYW as a "qualified" low power television station in accordance with the FCC's rules and that Comcast grant WEYW all of the must-carriage rights to be accorded such stations.

In both the *Order* and the *MO&O*, the Media Bureau concluded that WEYW was not a "qualified" low power television station because WEYW, supposedly, did not meet the legal criteria to be considered "qualified," noting that Stations WGEN and WSBS are full power television stations licensed to the same community as WEYW, Key West, Florida. One of the criteria to be considered a "qualified" LPTV station is that there be no full power station licensed to any community within the county served by the cable system in question.⁴ Pointing to the fact that Stations WGEN and WSBS are licensed to Key West, the Bureau concluded that WEYW did not meet all of the qualifying factors for mandatory carriage under the Act and the Commission's rules.⁵

³ 47 C.F.R. § 76.56(b)(2); 47 U.S.C. § 534(c)(1). See *Order*, 30 FCC Rcd at 3778.

⁴ 47 C.F.R. § 76.55(d)(6); 47 U.S.C. § 534(h)(2)(F).

⁵ *Order*, 30 FCC Rcd at 3780; *MO&O*, 28 FCC Rcd at 16762-63.

The Bureau rejected WEYW's argument that its showing should be approved because of the "extraordinary circumstances" present in this case.⁶ The Bureau also considered Bellizzi's showing that neither of the Key West full power stations provided anything approaching local service to Key West and Monroe County to be "irrelevant" to its carriage decision.⁷

This case presents an important question for review. Has the Commission any option but to interpret the Communications Act in such a manner as to result in an incoherent decision, both at odds with the clear objectives of the statute and with the existing equities in this case? The answer, of course, is a resounding "yes." The Commission is not obligated to arrive at unfair and improper decisions. The Bureau's decisions result in a ridiculous holding and place form over substance. Bellizzi respectfully requests that the Commission undo this travesty.

It is hardly "irrelevant" if full power stations licensed to a community do not provide local programming to that community. For the Bureau to claim that "proximity" alone is sufficient to veto an LPTV station from having must carriage is the ultimate folly. Under the Bureau's reasoning, a station which provided non-stop indecent programming or 24 hours, seven days a week of "Leave It to Beaver" reruns could deny an otherwise qualified LPTV station cable carriage because of the station's community of license, despite the fact that not one second of the programming broadcast focused on that community or its needs and interests. While the stations in this case do not go so far as to broadcast 24/7 reruns of "Leave It to Beaver," they do broadcast in a language (Spanish) that the vast majority of residents of Key West and Monroe

⁶ *Order* at note 21.

⁷ *Order*, 30 FCC Rcd at 3780. (It is "irrelevant if the full power stations licensed to the same community do not provide locally-focused programming; their proximity is sufficient to prevent WEYW from being considered 'qualified.'")

County cannot understand and provide programming which is acknowledged to focus on Miami and Dade County residents' needs and interests.

Bellizzi cited the case, *Gardner v. FCC*⁸ in support of its position. In that case, the Court asserted that “seemingly mandatory language [in the Communications Act] does not prevent the entertainment of rehearing petitions beyond the statutory period where *extraordinary circumstances indicate that justice be served.*”⁹ Bellizzi has argued throughout this matter that the key principal of *Gardner* is that, despite the seemingly clear language of the Communications Act, its language can be interpreted differently “where extraordinary circumstances indicate that justice be served.”

The Bureau chose, instead, to narrowly construe *Gardner* to apply only when the Commission is at fault. *Gardner* does not state that its holding only applies when the Commission is at fault and the Bureau's attempt to unreasonably limit the scope of *Gardner* to a discrete set of circumstances is unavailing. As the same Court stated in a subsequent case:

“In thus attempting to distinguish prior cases, the Commission has run amok with a venerable common law method. Distinguishing cases on the basis of principled differentiations is one thing; consciously setting out to ‘confine each case to its own facts,’ another -- one which would virtually eliminate all precedent. After all, finding factual variations from case to case is a trivial task, and to say a case has been confined to its own facts is just a polite way to say it has been ignored. But the Commission cannot be so cavalier with its own precedent and those of this court without suggesting that the rationale by which it is reaching its conclusions is either illogical or *sub rosa*, and thereby inviting reversal.”¹⁰

⁸ 530 F. 2d 1086 (D.C. Cir. 1976).

⁹ *Id.* at 1091 (emphasis added).

¹⁰ *Communications Investment Corp v. FCC*, 641 F. 2d 954, 976 (D.C. Cir. 1981).

The Commission must not, as the Media Bureau did, confine *Gardner* to its own discrete set of facts. The holding of *Gardner* is that, notwithstanding the seemingly mandatory language of the Act, where extraordinary circumstances indicate that justice would be served by consideration of an argument, the Commission must give consideration to that argument. The Bureau failed to do so here, since it clearly failed even to review Bellizzi's showing that Stations WSBS and WGEN had failed to provide local service to Key West and, therefore, did not function as Key West stations.

Seemingly mandatory language may often be interpreted to reach a different conclusion. One need look no further than the First Amendment to the Constitution, which states, in part, that "Congress shall make no law abridging the freedom of speech." That command would seem to be clear and unambiguous; yet, the history of the Supreme Court's First Amendment adjudication "is one of continual development."¹¹

As such, prior to ruling on the WEYW Complaint, the Bureau was legally bound to examine whether there were "extraordinary circumstances" present indicating that justice would be served by an interpretation of the Act consistent with WEYW's position that it is entitled, as a "qualified" LPTV station, to must-carriage. In fact, WEYW demonstrated in its Complaint filed with the Bureau, and neither the Commission nor Comcast at any time has argued to the contrary, that Stations WGEN and WSBS do not serve Key West as legitimate full power stations. That is not surprising since it would be a near impossible task to argue to the contrary, given that Stations WGEN and WSBS have acknowledged to the Commission that they are

¹¹ *Denver Area Educational Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727 (1996). Over the years, the Supreme Court "has restated and refined basic First Amendment principles, adopting them more particularly to the balance of competing interests and special circumstances of each field of application." *Id.* at 744. Thus, notwithstanding the express language of the First Amendment, it is beyond dispute that courts have often affirmed Congress' efforts to make laws which infringe on the unlimited right to speak. "No law" does not mean "no law."

interested in serving the populated areas of Dade County. That would explain why they broadcast in a language (Spanish) that the overwhelming majority of Key West and Monroe County viewers cannot understand. Dade County is located over 125 miles from Key West. It is in Dade County where WGEN and WSBS maintain their main studios and it is from there that these stations' programming is broadcast. Not so coincidentally, over 60% of the population of Dade County speaks Spanish.

These factual statements are primarily based on the station's own admissions. Stations WGEN and WSBS receive must-carry treatment in Miami-Dade County based on their showings made to the Commission emphasizing their local service to Miami and Dade County communities. The Commission action granting WGEN's Petition for Special Relief modified that station's market for cable carriage and accorded it must-carry rights throughout Miami-Dade and Broward Counties. The Commission in that action noted WGEN's statement that its programming "is responsive to the interests and needs of the non-Mexican Latin American Hispanic population, specifically in the subject communities carriage [in Dade and Broward Counties]" and that its programs focus on issues important to residents of communities located in Miami-Dade County.¹² The Commission also noted that WGEN was broadcasting "programming that treats issues and events relevant to specific communities and programming of interest more generally to the population [in Miami-Dade County]."¹³ WGEN additionally stated that "its programming is intended primarily to serve Hispanic viewers,"¹⁴ virtually none of which reside in Key West.

¹² Mapale, LLC, 24 FCC Rcd 8366, 8371-72 (MB 2009).

¹³ *Id.* 24 FCC Rcd at 8372, note 38.

¹⁴ *Id.* 24 FCC Rcd at 8373.

This case presents a unique anomaly in which those stations which are claimed by the Commission to serve Key West as full power stations operate as LPTV stations in Key West, while operating as full power television stations in Miami-Dade County. *See* Declaration of Rick Bellizzi. On the other hand, WEYW, which is licensed as an LPTV station, operates as a full power television station, providing the only local service to Key West and Monroe County. However, the Bureau does not consider this unique anomaly “extraordinary,” despite the fact that it is, perhaps, the only such occurrence in the United States. When one considers the importance of localism to the regulation of broadcasting, it is clear that these are extraordinary circumstances.

Localism is a cornerstone of broadcast regulation.¹⁵ The Commission has never contested that WEYW provides programming addressing local news and informational needs to Key West and Monroe County, which would otherwise not be adequately served. WEYW demonstrated in its Complaint and Reply filed with the Media Bureau that it presents approximately 28 hours of local programming to Key West each week. WEYW broadcasts the only daily program, “Good Morning Florida Keys,” focusing on Key West local news and information on a daily basis. WEYW has received hundreds of letters from government officials, local entities and viewers thanking the station for broadcasting its local programming. To ignore the WEYW provision of local service to Key West and Monroe County by elevating what is, in effect, LPTV service to those areas by Stations WGEN and WSBS in order to deny WEYW cable carriage is to elevate form over substance to a substantial degree.

The Commission should recognize the “extraordinary circumstances” existing here and grant WEYW the same carriage rights which it would accord to any Key West full power

¹⁵ *Broadcast Localism*, 23 FCC Rcd 1324, 1327 (2008).

television station. Given the unique and extraordinary circumstances here, failure to acknowledge them in its decision would signify that the Commission is not interested in serving justice and carrying out the purposes of the relevant portions of the Act and its own rules.

In view of the above, WEYW is a clearly qualified LPTV station and it is entitled to must-carry cable carriage on Comcast's Monroe County cable system. The Commission should reverse the conclusions reached in the Media Bureau *Order* as being legally incorrect.

Respectfully submitted,

BELLIZZI BROADCASTING NETWORK, INC.

By: _____



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Date: May 28, 2015

DECLARATION

I, Rick Bellizzi, am the owner and manager of Bellizzi Broadcasting Network, Inc. (“Bellizzi”), licensee of Station WEYW-LP, Key West, Florida. I hereby declare, under penalty of perjury, that I have reviewed the attached Application for Review and that it is true and correct to my knowledge and belief.

As a resident of Key West and Monroe County and as a result of my long-term professional involvement in television broadcasting, I am very aware of the full power television and LPTV stations which are licensed in and around Key West. I have viewed Stations WGEN-TV and WSBS-TV throughout the years and have discussed those stations’ broadcast performance with literally scores, if not hundreds, of city and county residents.

I can state without fear of contradiction that not only do WGEN-TV and WSBS-TV fail to program to meet the problems, needs and interests of Key West and Monroe County residents, but that the stations’ signals barely cover Key West and are virtually unwatchable. Because the signals are so weak, anyone who does not receive cable in Monroe County is almost unable to watch either of these stations off-air. That means that, not only do WGEN-TV and WSBS-TV broadcast in a language that most Key West and Monroe County residents cannot understand, and neither station seeks to program to the problems, needs and interests of Key West and Monroe County residents, but almost no one in Monroe County can receive the stations unless they order cable from Comcast because of the station’s technical inadequacy.

Because of these stations’ weak signals, there is effectively no off-air broadcast full power television service in Monroe County to individuals without cable. Residents are unable to receive either of these stations off-air. This result may not be a terrible dilemma for some people, given that neither station’s programming can be understood by residents and neither

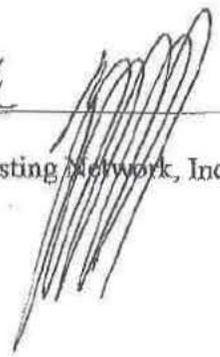
station does anything in terms of broadcasting to the interests and needs of county residents; however, it is nonetheless a distortion of the public interest. Full power stations should not be forcing residents to pay for cable in order to view their broadcasts.

Stations WGEN-TV and WSBS-TV are licensed as Key West television stations, but operate as Miami television stations. They broadcast with the miniscule power that a typical LPTV station might broadcast. WGEN-TV is licensed to broadcast at 7 kW. It actually broadcasts at 850 Watts. WSBS-TV is licensed to broadcast at 1 kW. It actually broadcasts at 30 Watts. On the other hand, their Miami LPTV stations (WGEN-LP 15 kW; WSBS-CD 15 kW) operate with far more power, because that is the audience the stations wish to provide service. The main studios of each of these stations are located in Miami, not Key West. These stations function the exact opposite of how they should. The LPTV stations serving Miami function as full power stations and the full power stations operate as LPTV stations and fail to serve Key West.

While Station WEYW is licensed as a LPTV station to serve Key West, WEYW operates, in effect, as a full-power television station. It provides a substantial amount of local programming which meets the needs of city and County residents. We offer a daily talk show containing local content. We conduct interviews with local government officials. We provide local news and information, broadcasting at least 28 hours of local broadcasting each week. We have previously submitted letters to the FCC from city and county government officials thanking WEYW for providing service to their communities as well as letters from non-profit organizations and from viewers attesting to our excellent local programming. It is our plan to eventually broadcast from multiple antennas located in the Keys so that our programming may be viewed by all Monroe County residents off-air.

Unfortunately, obtaining cable carriage is a requisite for a television station's financial survival. Comcast, as the controller of the sole broadcast pipeline, is very aware of that fact. We compete against Comcast in broadcasting programming and Comcast utilizes its power as controller of its broadcast pipeline to destroy its competition by failing to provide WEYW with cable carriage. Were it to occur, the loss of WEYW's programming would constitute a real loss in local service to Key West and Monroe County residents. The Commission should reconsider the Bureau's decision and grant WEYW mandatory carriage as a qualified LPTV station, so that all of Monroe County may actually have a television station providing local programming.

May 28, 2015



Rick Bellizzi
Bellizzi Broadcasting Network, Inc.
President

CERTIFICATE OF SERVICE

I, Malinda Markland, do hereby certify on this 28th day of May, 2015, that a true and correct copy of the foregoing "Application for Review" has been sent via U.S. Mail, postage prepaid, to the following:

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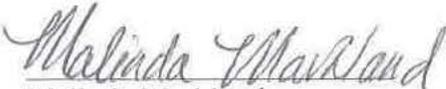
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