

**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
Attn: Chief, Media Bureau

OPPOSITION TO APPLICATION FOR REVIEW

Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates (“Comcast” or the “Company”), hereby opposes the Application for Review (“Application”) filed by Bellizzi Broadcasting Network, Inc. (“Bellizzi”), licensee of analog low power television station WEYW-LP (Channel 19), Key West, Florida (“WEYW” or the “Station”) in the above-captioned proceeding. Bellizzi seeks reversal of the Media Bureau’s (the “Bureau”) Order on Reconsideration in *Bellizzi Broadcasting Network, Inc.*,¹ which upheld the Bureau’s prior denial of the Station’s must carry complaint (the “Complaint”) involving the cable communities served by Comcast’s Key West, Florida cable system.²

¹ DA 15-500 (rel. Apr 28, 2015).

² See *Bellizzi Broadcasting Network, Inc.*, 28 FCC Rcd. 16761 (2013) (the “Must Carry Order”).

The Application is without merit.³ The Bureau's well-reasoned determination that WEYW is not a "qualified" low power television ("LPTV") station for must carry purposes under Section 614(h)(2) of the Communications Act of 1934, as amended (the "Act") and the Commission's implementing rules is wholly consistent with the statute and longstanding Commission precedent, and the Bureau correctly rejected Bellizzi's request that it create an "extraordinary circumstances" exemption to the statutory language. Accordingly, the Commission should deny the Application.

I. The Bureau Properly Denied WEYW Must Carry Status.

The Act requires LPTV stations such as WEYW to meet a specific set of criteria to qualify for must carry status.⁴ An LPTV station must meet each of the criteria to be a "qualified" low power television station. At issue in this case is the criterion set forth in Section 614(h)(2)(F), which unambiguously provides that LPTV stations are eligible for must carry "only if . . . there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system."⁵ As noted above, WEYW is an LPTV station licensed to Key West, Florida. Bellizzi does not dispute that there are also two full power broadcast television stations licensed to Key West, Florida (WGEN-TV and WSBS-TV).⁶ Nor does it dispute that Key West is located in Monroe County, Florida as is Comcast's Key West cable

³ For the reasons stated below, Bellizzi fails to meet the criteria for applications for review as set forth in Section 1.115(b)(2) of the Commission rules. *See, e.g., In the matter of Long Island Lighting Company*, 14 FCC Rcd 16521 at ¶ 8 (1999) (citing the standard of review for applications for review under 47 C.F.R. § 1.115(b)(2)).

⁴ *See* 47 U.S.C. § 534(h)(2). *See also* 47 C.F.R. § 76.55(d).

⁵ 47 U.S.C. § 534(h)(2)(F) (emphasis added); *see also* 47 C.F.R. § 76.55(d)(6).

⁶ *See* Application at 2 ("The relevant facts in this matter have never been in dispute.").

system and each of the communities served by that system.⁷ Accordingly, consistent with Commission precedent,⁸ the Bureau correctly found that WEYW is not a “qualified” LPTV.

The Order on Reconsideration succinctly and accurately summarized why WEYW is not a “qualified” low power television station:

Section 76.55(d) of our rules directly implements the mandate of Section 614(h)(2) of the Communications Act, pursuant to which a low-power station can only qualify for mandatory carriage if there is no full-power television station licensed to its community or political subdivision. WEYW is licensed to the same community, Key West, Florida, as full-power stations WGEN and WSBS. Accordingly, because a low-power television station must meet each of the Communications Act’s six criteria to be considered “qualified,” WEYW’s failure to meet this one factor is fatal to its request for mandatory carriage.⁹

Despite Bellizzi’s claims, there is simply no credible basis for the Commission to reach an alternative conclusion.

II. Contrary to Bellizzi’s Claims, the Commission Cannot Ignore the Governing Statute or Create an “Extraordinary Circumstances” Exemption That Would Be Inconsistent with the Act.

Bellizzi argues that the Commission must ignore the clear statutory directive that LPTV stations do not qualify for must carry where a full power station is licensed to a community in the same county because WEYW’s programming is “more local” than that of full power stations WGEN-TV and WSBS-TV, which broadcast Spanish-language

⁷ *Id.*

⁸ See, e.g., *Complaint of Millenium Communications & Productions against Cox communications for Carriage of Translator Station KLNLM-LP, Lufkin, Texas*, 17 FCC Rcd 21504 (2002).

⁹ Order on Reconsideration at ¶ 5. See also Must Carry Order at ¶ 6.

programming. There are, however, no comparative content standards included within Section 614(h)(2)(F) of the Act.

Congress deliberately and unequivocally predicated “must carry” status for LPTV stations on the absence of any local full power stations. Had Congress intended to require a comparative content analysis for purposes of allocating must-carry rights to LPTV stations, it would have included such a requirement in the Act, but it did not. The Bureau correctly recognized that the comparative programming content analysis advocated by Bellizzi has no relevance under the governing statute.¹⁰

Bellizzi essentially argues that the Commission should either completely ignore the statutory requirements for being considered a “qualified” LPTV station or simply waive the requirements of Section 614(h)(2)(F) of the Act, *sua sponte*. The Commission, however, cannot ignore the clear statutory language. And, there is no waiver mechanism in the portion of the must carry statute pertaining to LPTV stations. If Congress had

¹⁰ See Order on Reconsideration at ¶ 5; Must Carry Order at ¶¶ 5-6. As Comcast previously noted in its pleadings below, to permit the content analysis advocated by Bellizzi would be to add constitutional error on top of statutory error. See Opposition to Petition for Reconsideration at n. 10; Opposition to Complaint at n. 7. The Supreme Court determined that cable operators are protected by the First Amendment. “There can be no disagreement on an initial premise: *Cable programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment.*” *Turner Broadcast. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) (“*Turner I*”) (citation omitted; emphasis added). The Supreme Court expressly reserved judgment on the constitutionality of must carry for low power television because it “appears to single out certain low-power broadcasters for special benefits on the basis of content.” *Id.* at 644 n.6. Here, Bellizzi continues to press for a detailed Commission evaluation of content available on low power WEYW as compared to that available on the two full power stations licensed to Key West, see Application at 5-8, which would be decidedly inconsistent with the Supreme Court’s reliance on *content neutrality* as a basis for upholding must carry for full power broadcasters. See *Turner I*, 512 U.S. at 644; see also *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 217-218 (1997).

intended there to be such a waiver mechanism, it certainly had the opportunity to create one and chose not to do so.¹¹

In challenging the Bureau's Order on Reconsideration, Bellizzi again relies on *Gardner v. FCC*,¹² where the court determined that the Commission was required to consider a late filed petition for reconsideration in "extraordinary circumstances" – effectively waiving the statutory deadline for such filings.¹³ But the Bureau has already, and for good reason, considered and rejected this narrow ruling as inapposite to Bellizzi's circumstances. The Bureau correctly distinguished the facts pertaining to the procedural issues in *Gardner* from the substantive issues in the instant case, stating:

Petitioner's argument is unavailing because the discrete set of Commission precedent it cites has no application in these very different circumstances. Petitioner's argument fails to bridge the qualitative differences between disregarding the lateness of a petition, particularly when the Commission's mistake is a causal factor of that lateness, and a low power station's failing to meet requirements for it to be classified as a "qualified" station, a definitional failure in no way caused by Commission action or inaction.¹⁴

In short, the Bureau correctly found that *Gardner* is not applicable in this case.¹⁵ There is no factual or legal basis for the Commission to make a finding to the contrary.

¹¹ Indeed, Congress created such a "waiver" mechanism in the context of the must carry rules assigning full power commercial stations to particular television markets. See 47 U.S.C. § 534(h)(1)(C).

¹² 530 F.2d 1086 (D.C. Cir 1976).

¹³ See Application at 4-5.

¹⁴ Order on Reconsideration at n. 21. See also Must Carry Order at n. 14.

¹⁵ Bellizzi erroneously relies on *Communications Investment Corp. v. FCC*, 641 F.2d 954 (D.C. Cir. 1981) to support its contention that the Bureau erred in distinguishing *Gardner* from the current case. In *Communications Investment Corp.*, the court ruled that the Commission may not disregard its own precedent on the basis of "trivial" variations from case to case. See *Communications Investment Corp.* at 976. In this case, the Bureau did not disregard precedent. To the contrary, the Bureau highlighted "qualitative"

Bellizzi's desire to gain mandatory carriage rights for WEYW on Comcast's Key West cable system simply cannot be reconciled with the unambiguous requirements for a "qualified" low power television station set forth in Section 614(h)(2) of the Act.¹⁶

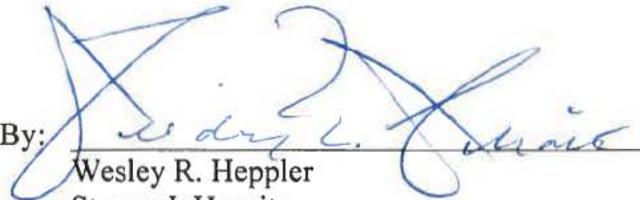
III. CONCLUSION

For the foregoing reasons, Comcast respectfully requests that the Commission deny Bellizzi's Application for Review, as WEYW plainly is not a "qualified" low power television broadcast station.

Respectfully submitted,

**Comcast Cable Communications, LLC
on behalf of its subsidiaries and affiliates**

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differences between the limited procedural ruling in *Gardner* and WEYW's failure to meet the core substantive requirements of Section 614(h)(2)(F) of the Act. See Order on Reconsideration at n. 21; Must Carry Order at n. 14.

¹⁶ See 47 U.S.C. § 534(h)(2). See also 47 C.F.R. § 76.55(d).

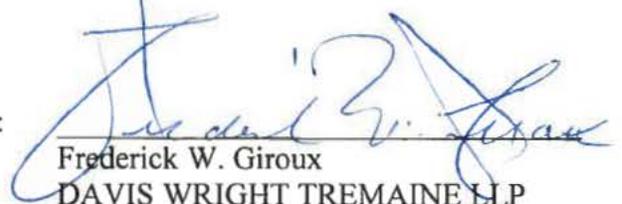
CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing "Opposition to Application for Review," and to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and is not interposed for any improper purpose.

Respectfully submitted,

**Comcast Cable Communications, LLC
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CERTIFICATE OF SERVICE

I, Deborah Williams, do hereby certify on this 12th day of June, 2015 that a true and correct copy of the foregoing "Opposition to Application for Review" has been sent via U.S. mail, postage prepaid to the following:

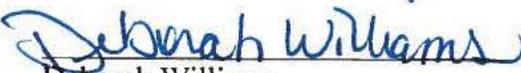
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