

**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

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

Bellizzi Broadcasting Network, Inc. (“Bellizzi”), licensee of Station WEYW-LP (Channel 19), Key West, Florida (“WEYW”), by its attorney, hereby submits its Reply to the Comcast Cable Communications (“Comcast”) Opposition (the “Opposition”) to Bellizzi’s Application for Review of that *Order on Reconsideration* (the “Order”),¹ released by the Commission’s Media Bureau (“the Bureau”) on April 28, 2015. The *Order* denied Bellizzi’s Petition for Reconsideration and upheld the *Memorandum Opinion and Order*² denying a must-carry complaint (the “Complaint”) filed by Bellizzi on behalf of WEYW against Comcast (involving cable communities served by Comcast’s Key West cable system). The Bureau concluded that WEYW was not a “qualified” low power television (“LPTV”) station under the FCC’s rules.

In its Application for Review, Bellizzi demonstrated that the *Order’s* conclusions were legally incorrect and, to the extent that the *Order* followed existing FCC policy or precedent, that

¹ 30 FCC Rcd 3778 (MB 2015)

² 28 FCC Rcd 16761 (MB 2013)

policy or precedent should be overturned. Comcast argued in its Opposition that the Bureau's conclusions should be affirmed and that Bellizzi's Application for Review was without merit. In support of its position that Comcast's position is legally incorrect, Bellizzi submits the following:

Comcast claims that the Bureau's determination that WEYW is not a "qualified" LPTV station for must-carry purposes under the Communications Act of 1934, as amended (the "Act") is well-reasoned and consistent with Commission precedent. According to Comcast, because WEYW is licensed to a community, Key West, which has two full-power television stations licensed to it (WSBS-TV and WGEN-TV), WEYW can never be considered a "qualified" LPTV station under the Commission's must-carry rules.

The Comcast Opposition is basically a restatement of the reasoning contained in the Bureau *Order*. For example, without considering whether the circumstances in this case should be considered "extraordinary circumstances," Comcast contends, in effect, that such circumstances are irrelevant and provide no basis for the Commission to reach a conclusion that WEYW is a "qualified" LPTV station for cable carriage. For the same reasons that Bellizzi disagrees with the Bureau *Order*, it also disputes Comcast's attempt to render the *Order* a credible decision.

Bellizzi posed the following issue in its Application for Review: Does the Commission have 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 Act and with the existing equities in this case? Bellizzi concluded that the answer to this postulate is "yes" and the Commission has the discretion to reach a just decision here. Both Comcast and the Commission disagree, concluding that it is irrelevant whether viewers in Key West actually receive a local programming service from those full-power television stations licensed to that community.

But, the Commission need not interpret the Communications Act in such a manner as to exclude WEYW from cable carriage. Section 614(h)(2) of the Act, states that an LPTV station must meet certain criteria to be deemed qualified for cable carriage. These criteria center around whether the LPTV station performs like a local full-power television station with respect to the local cable community or communities that it serves. However, under the Act, where there are existing local full-power television stations already present, there is, theoretically, no need for an LPTV station to address local needs. There is no need to credit an LPTV station for acting like a local full-power television station when such a television station exists and already provides such service.

Here, however, there are no local full-power stations present which effectively serve the problems, needs and interests of those residents located in the Comcast cable communities. There are two television stations, admittedly, which are licensed to Key West, but they do not seriously address local needs and interests. They do not even broadcast in a language which local residents can understand. While the Bureau and Comcast argue that it is irrelevant whether the stations in question actually function as Key West stations, that is exactly what Section 614(h)(2) of the Act is about, the provision of local service.

Throughout this proceeding, Bellizzi has asked, in various ways, whether the physical presence of a full-power television station broadcasting, 24 hours a day, objectionable programming which is clearly not in the public interest—whether it be indecent programming, programming consisting of 100% commercials or the same 30 minute program broadcast 336 times per week—should, nonetheless, result in the denial of the request by an otherwise “qualified” LPTV station for cable carriage because that full-power television station broadcasting objectionable programming is licensed to the same community as the LPTV station.

Comcast and the Bureau consider the question irrelevant and conclude that the presence of such a full-power station automatically deprives any LPTV station of “qualified” must-carry status.

However, such a conclusion does not serve the aims of justice, nor would such a ruling be in the public interest. The television stations in question, here, are not present in any meaningful way, since they provide no local service to Key West and other Monroe County communities. *See* Attached Statement of Rick Bellizzi. Ignoring the specific facts in an individual case makes the Commission’s rationale by which it reaches its conclusions illogical. As previously noted by Bellizzi in its Application for Review, statutory language which some would consider mandatory may be interpreted and has in the past been interpreted by the Commission, with Court approval, as permissive.³

WEYW provides the very local service to Key West and its citizens that the full-power television stations licensed to Key West do not, since these television stations broadcast in a different language from that spoken by the majority of local residents and seek to meet the needs of a different locale located well over 120 miles away from Key West. *See* Attached Letters from Rick Bellizzi⁴ and Other Letters in Support of WEYW from Local Key West and Monroe County Officials. To ignore the provision of local service to viewers in Key West and other communities in Monroe County by WEYW because of the theoretical presence of two full-power television stations, which utterly fail to serve the needs of that population, is to elevate form over substance to such a degree as to render the resulting decision arbitrary and capricious.

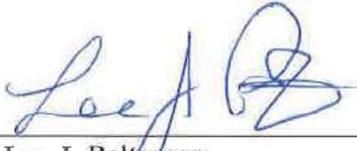
³ *See eg. National Association of Broadcasters v. FCC and U.S.A.*, No.14-1154 (D.C.Cir. June 12, 2015). (Slip Opinion).

⁴ One of the letters is addressed to Steven Broeckaert. That letter was not sent to Mr. Broeckaert.

For the foregoing reasons, Bellizzi respectfully requests that the Commission grant Bellizzi's Application for Review and accord WEYW its rights as a "qualified" LPTV station for must-carry purposes.

Respectfully submitted,

BELLIZZI BROADCASTING NETWORK, INC.

By: 

Lee J. Peltzman
Its Counsel

Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036

Date: June 30, 2015

DECLARATION

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

As I have previously stated, as a long-time resident of Key West and Monroe County and as a result of my long-term professional involvement in television and cable broadcasting as well as communications generally, I am very aware of the full-power television and Low Power TV ("LPTV") stations which are licensed in and around Miami and Key West. I have viewed Stations WGEN-TV and WSBS-TV (to the extent that those stations may be clearly viewed off-the-air in and around Key West) over many years and I have discussed those stations' broadcast records with more than a hundred Key West and Monroe County residents.

Again, I wish to state that WGEN-TV and WSBS-TV fail to program to meet the problems, needs, and interests of Key West and Monroe County residents. The station' signals are extremely weak and barely cover Key West. WSBS, with its limited power, does not cover the entire Island of Key West. Because of this, the stations are virtually unwatchable off-the-air. In fact, because those signals are so weak, most viewers who do not receive cable in Monroe County are likely unable to receive either of these stations off-air. Not only do Stations WGEN-TV and WSBS-TV broadcast in a language that most Key West and Monroe County residents cannot understand, while failing to program to serve the needs and interests of Key West and Monroe County residents, but, as noted, virtually no one in Monroe County can view the stations unless they pay for cable.

As I have previously noted, Station WGEN-TV and WSBS-TV are licensed as Key West television stations, but operate as Miami/Dade County television stations. The stations broadcast in Key West with miniscule power below the power that they are licensed to operate. In fact, both

stations operate with power similar to that which a typical LPTV station might be expected to broadcast. For example, WSBS is licensed to broadcast at 177 Watts TPO (1 kW ERP), but, in reality broadcasts at 30 Watts TPO. Also, the stations share an antenna but, while their antenna is licensed to be near the top of their tower (close to 180 feet above ground on a 200 foot tower), in reality, as is demonstrated in the attached photograph, the stations operate with an antenna which is located near the bottom of their tower, only 60 feet above ground.

I know these statements are true because I have seen the transmitters and power controls in the stations' shared Key West studio and I have observed the shared antenna on the stations' tower numerous times. Also, the Commission's rules state that there must be two full-time employees at a television station, I know for a fact that WGEN-TV and WSBS-TV each have only one full-time person working at each of their stations in Key West.

On the other hand, the Miami LPTV stations operated by the WGEN-TV and WSBS-TV parent licensees operate with significantly greater facilities. Station WSBS-CD operates at 150 kW (ERP) and broadcast from an antenna almost 770 feet high. Station WGEN-LD broadcasts with 15 kW (ERP) from an antenna height of over 540 feet. These stations broadcast with much greater facilities for a simple reason; it enables them to serve the more populated Miami/Dade County area.

The main studios for each of these stations are located in Miami, not Key West. Attached are pictures showing the stations' studios. The combined main studio for WGEN-TV and WSBS-TV in Key West is, at most, 600 square feet, consisting, primarily, of an 8 x 8 foot room with one camera. That studio has never been used to record or broadcast live from that location. The camera was installed in 2013 after I filed my Complaint with the FCC. The size of the building is far less than 1% of the size of the Miami studios for these stations. In fact, the stations broadcast with significant main studios in Miami -- a 15,000 square foot studio for WGEN-TV and an 80,000

square foot studio for WSBS-TV -- demonstrating the relative importance of serving Miami and the unimportance of serving Key West to these stations. Each station employs over 100 persons at its Miami operations. Station business is conducted in Miami. If a Key West resident wants to meet someone associated with the management of WSBS-TV and/or WGEN-TV, he or she must travel over 110 miles to Miami to do so.

These television stations function the exact opposite of how they should. The LPTV stations serving Miami function as full-power television stations and the full-power stations, purportedly serving Key West, operate as minimal LPTV stations. Yet, the Media Bureau, with the support of Comcast, ignored this anomaly and cited these stations as reasons for denying WEYW status as a "qualified" LPTV station for cable-carriage.

In point of fact, while Station WEYW is licensed as an LPTV station serving Key West, WEYW operates, in reality, as the full-power television service to Key West. As shown by exhibits attached to earlier pleadings filed with the Media Bureau, which neither the Bureau nor Comcast have contested, WEYW provides a substantial amount of local programming which serves the needs of Key West and Monroe County residents. We offer a daily talk show containing local content. Each week, we conduct numerous interviews with local government officials. We provide local news and information on a daily basis, broadcasting at least 28 hours of local programming each week. We have previously submitted letters to the FCC from city, county and state government officials praising WEYW for providing service to their communities as well as letters from non-profit organizations and from viewers attesting to our excellent local programming. Attached are additional letters from officials praising WEYW's local service to Key West and Monroe County. 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.

WEYS currently broadcasts from a 1,500 square foot studio, the only working studio within 150 miles of the Florida mainland. Our plan is to construct a new 10,000 square foot facility with state of the art communications equipment and with backup generators. We intend to employ a staff of 20 full-time persons, plus interns from local schools.

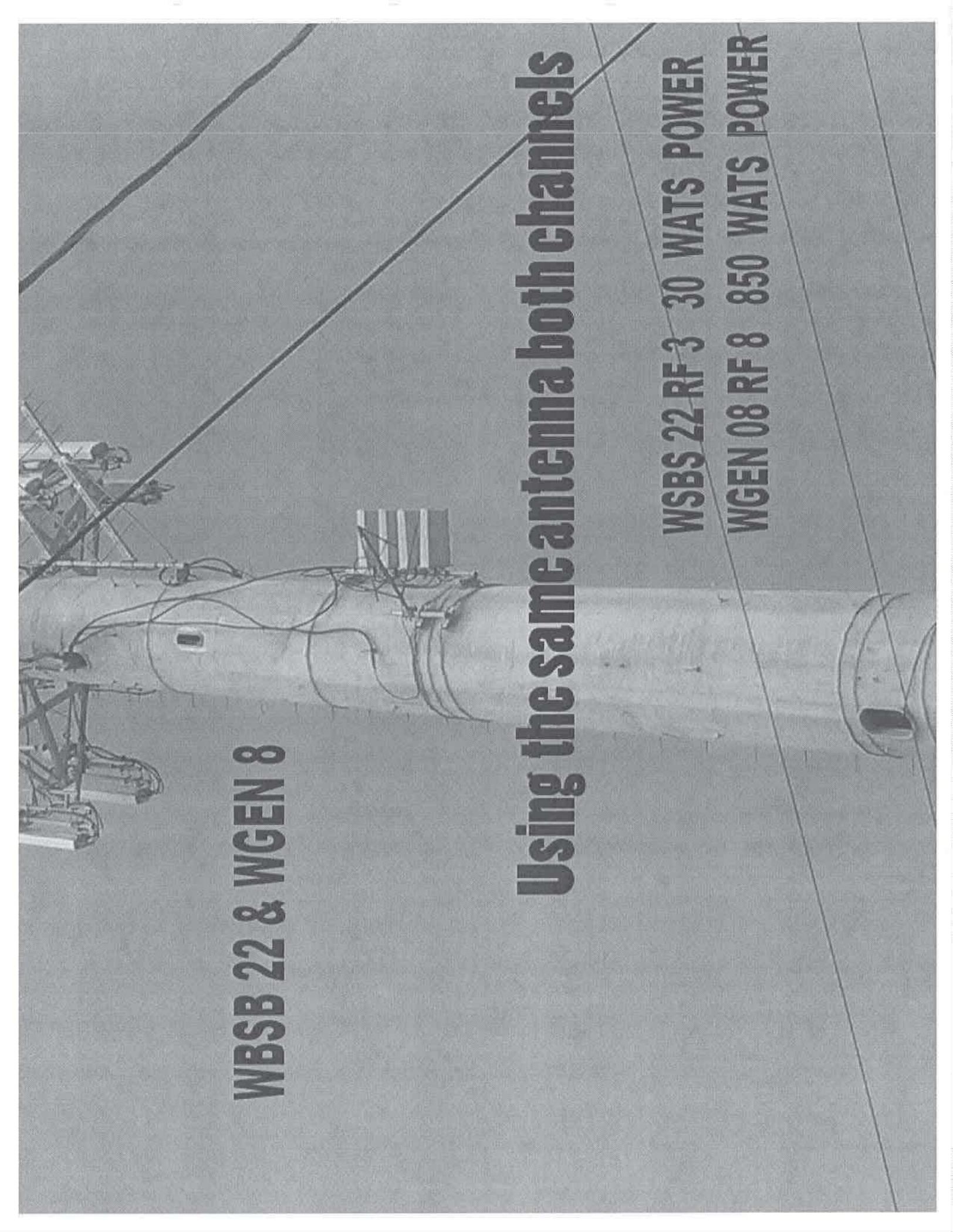
Unfortunately, as we have repeatedly stated, obtaining cable-carriage is a requisite for a television station's financial survival. Comcast is controller of the major broadcast pipeline in the Keys and is well aware of this fact. WEYW competes against Comcast in broadcasting its programming, since Comcast owns both a television network and cable channels and Comcast has utilized and continues to utilize its power as controller of the broadcast pipeline to attempt to destroy its competition, including WEYW, by failing to provide us and other LPTV stations with cable-carriage. Should this course of conduct continue to receive Commission approval, the possible resulting loss of WEYW's programming would constitute a real loss of local service to Key West and Monroe County residents.

The Commission has it in its power to correct the Media Bureau's error in denying our earlier-filed Complaint. The Commission should reconsider and grant WEYW mandatory carriage as a "qualified" LPTV station, so that all of Monroe County may finally have a station dedicated to providing local programming and serving local needs.

June 30, 2015



Rick Bellizzi
Bellizzi Broadcasting Network, Inc.
President



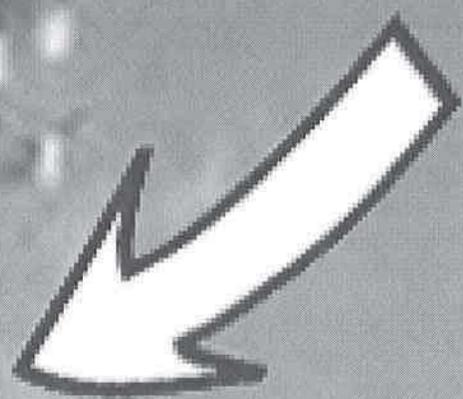
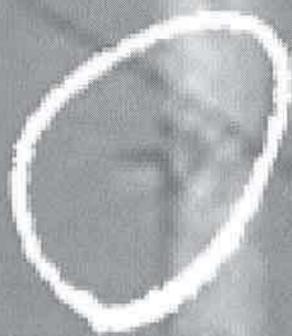
WBSB 22 & WGEN 8

Using the same antenna both channels

WBSB 22 RF 3 30 WATS POWER

WGEN 08 RF 8 850 WATS POWER

Antenna's license to top of tower



**600 SQ. FOOT
Building**



Transmitter site & Main Studios for Both station in Key West

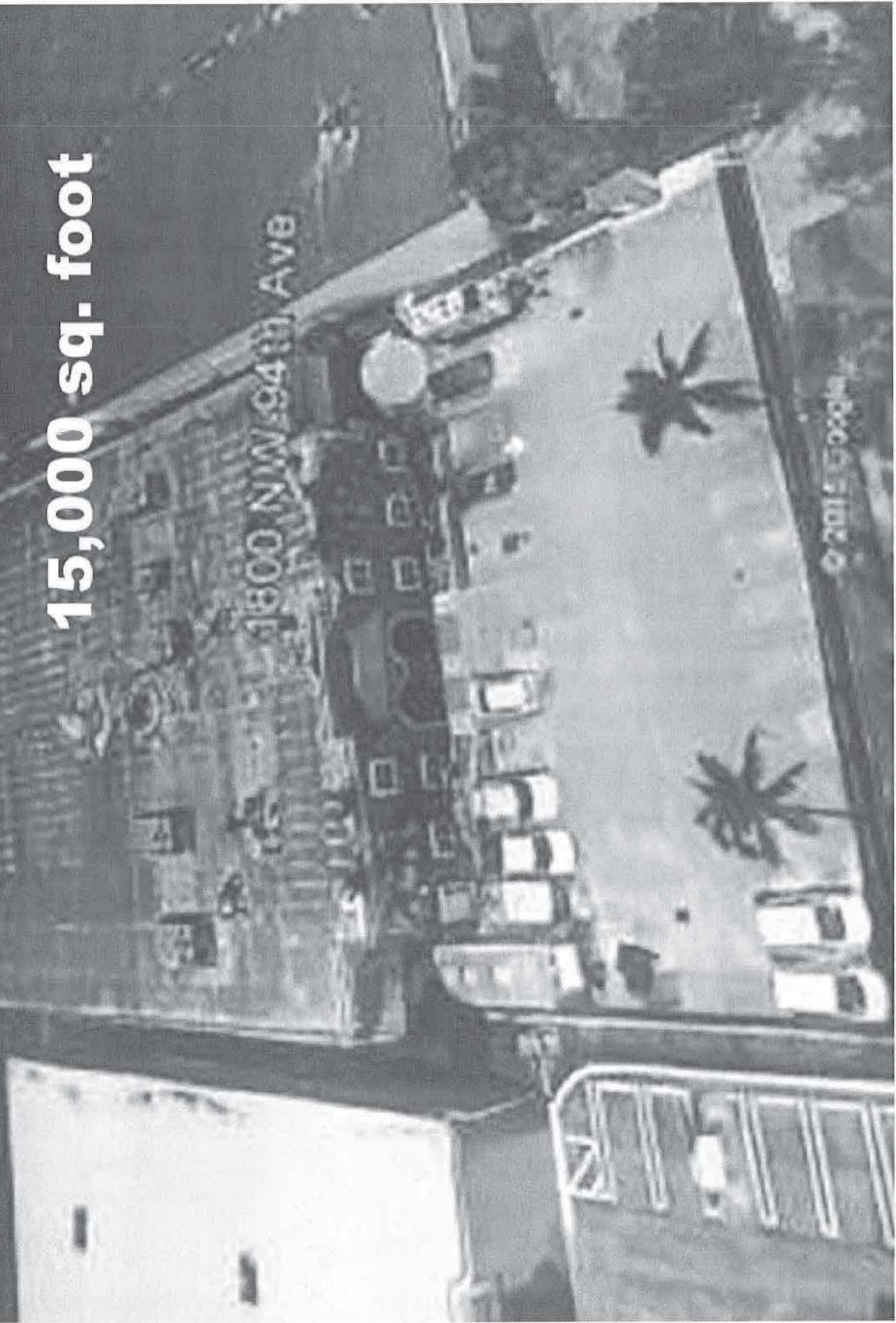
WGEN 08

WSBS 22



WGEN 08 Main Studio in Miami

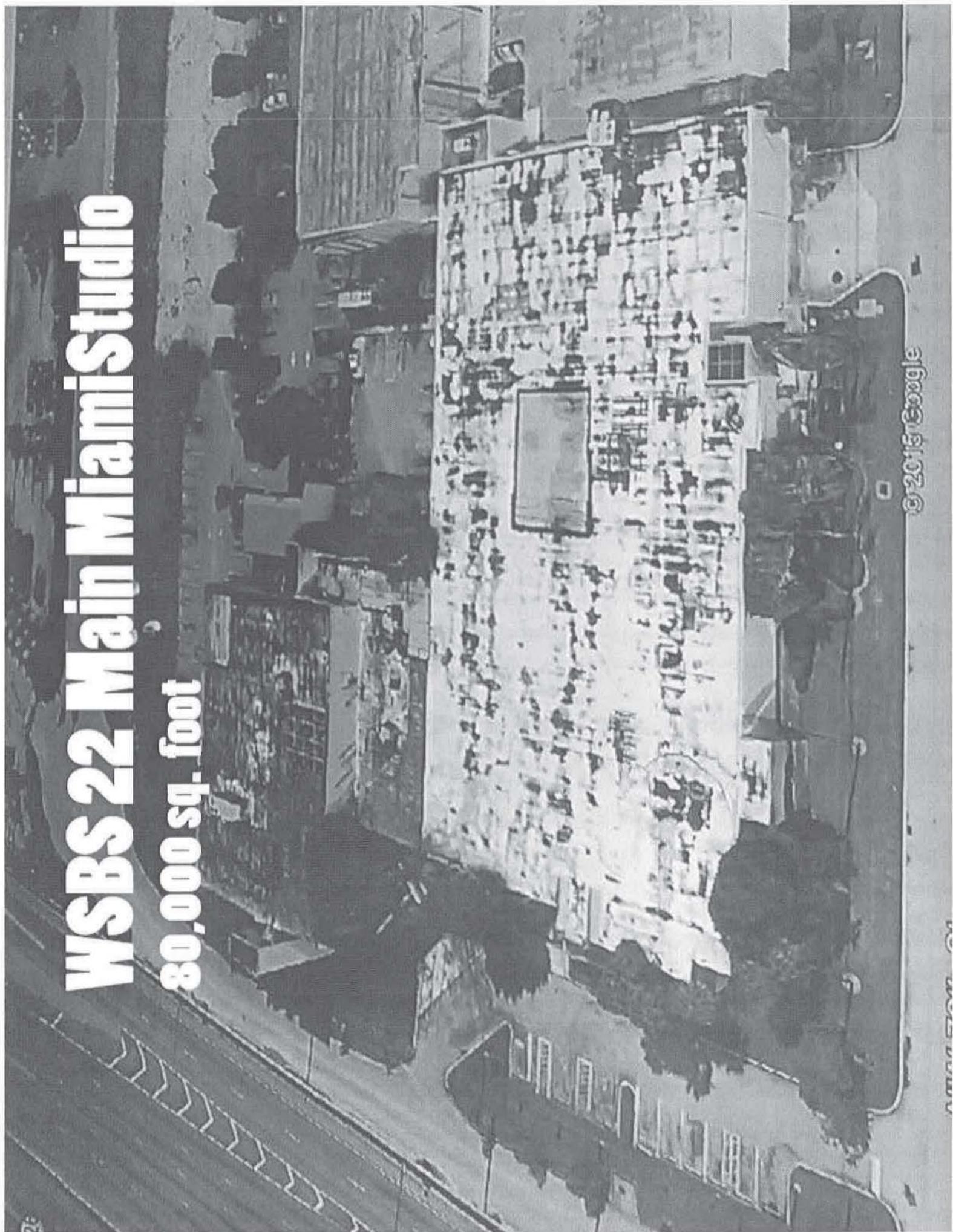
15,000 sq. foot



© 2015 SoReal

WSBS 22 Main Miami Studio

80,000 sq. foot



Steven Broeckaert
Media Bureau Chief, FCC
and Media Bureau

RE: Filing #13-244

Gentlemen:

With regard to the most recent filing from Comcast again objecting strenuously to our must carry request, we once again strongly reiterate that we do, indeed, meet all criteria for must carry as the two existing stations, WSBS and WGEN, although licensed in Key West, do not service this community.

We do not seek to remove these two stations, or interrupt them in any way, we do, however, ask that you set aside their existence when weighing all the factors for our request. They should not be included in your decision making process, as they DO NOT, in any way, service the community of license. This is a critical factor in this argument if you take into consideration the spirit of the Communications Act of 1934, which is to see that smaller communities, such as ours, have the ability to service the local population with news, current events and information critical to the safety of the population in the event of an emergency.

We are not asking to change the law, or set aside the law, we are looking to have the law enforced as it was meant to be. We do not feel that we are asking for anything other than to provide broadcast to our local residents. Not wanting to keep repeating what has been said, it is important to bear in mind the two stations in question do not broadcast in a language that can be understood by our residents. Not only do these stations broadcast in Spanish, all their programming is from studios located 160 miles north, (in Miami), of the address of license. They also direct the programming to the population of Miami, not Key West. They have not one iota of local (Key West) programming nor do they broadcast a single word in English. I fail to see how these stations meet the criteria for must carry. If they did so at the time of license, they are now 100% non-compliant in these critical areas. They also do not have a studio in Key West from which to broadcast, nor do they have an over the air signal that meets their license requirement.

Thank you again for your fair consideration and I await your decision.

Kind personal regards,

Richard Bellizzi
WEYW –Channel 19, Key West Florida

RE: Filing #13-244

To whom it may concern:

The facts contained herein are true and correct to the best of my knowledge. WSBS TV, Channel RF3 in Key West is broadcasting at 30 watts of power and WGEN TV Channel RF8 in Key West is transmitting at 850 watts. Both are at the tower site located at 527 Southard Street, Key West, Florida 33040. The antenna is located 60 feet above ground level and should be at 190 feet.

The shared studio at this site is in an 8'x8' room with one camera, and has never been used to record or broadcast live from this location. It is only set up to go live to WGEN in Miami, not to Mega TV.

Both stations are utilizing one antenna with a combiner.

The station's programming grid reflects that neither station broadcasts any programming directed to or about Key West.

Our plans are to continue to meet all the requirements of a full power station and expand our local programming and relocate into a new 10'000 foot state of the art studio with backup generators and a VIVX connection via fiber to all major television networks for cut ins or emergency broadcasts. We will be moving our current transmitter to a taller antenna at mile marker 20 that will cover the lower keys and construct a new transmitter in the upper keys to ensure over the air viewing to the entire keys.

Our studio will accommodate other stations that would like to share our studio. This is the only studio south of Miami (160 miles to the north). We will staff 20 Monroe County residents and also have interns from the local high school and college videography and television editing classes. In our Miami Studio located at 14901 NE 20th Avenue, we currently occupy space at WPBT, public television and plan to hire 20 of their employees part time to produce local programming for Monroe, Dade and Broward counties. If the FCC approves a commercial television station broadcasting on a public television's license, we will utilize WPBT's 2.4 channel, for which we will compensate them by sharing transmitter expenses.

If you require any further information or testimony to the facts in this letter, please contact me by email or telephone.

Best regards.

Richard Bellizzi
WEYW – Channel 19



Catherine Vogel
State Attorney
530 Whitehead Street, Suite 301
Key West, Florida 33040

(305) 292-3400
Fax: (305) 294-7707

June 17, 2015

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau
FEDERAL COMMUNICATIONS COMMISSION

Re: WEYW, Channel 19, Florida Keys

Dear Mr. Broeckaert,

I want to advise you of the great partnership existing between WEYW Channel 19 and the people of Monroe County, Florida. As a prosecutor for 25 years I have been tasked with maintaining the safety and security of this community. In furtherance of this goal it is vital to communicate with the entire county population to insure they are aware of potential dangers. I had the pleasure of appearing on Channel 19 on numerous occasions to inform the public about threats involving many topics including bullying and designer drugs known commonly as bath salts. On a regular basis the station reached out to ask if there was any new issue I wanted to address and they were always willing to assist. The Florida Keys benefit greatly from a local broadcaster with a commitment to inform the public and provide local law enforcement an opportunity to protect lives. I look forward to working with them in the future and hope this correspondence assists you in determining Channel 19's service to our community.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Manny Madrugá".

Manny Madrugá
Chief Assistant State Attorney
16th Judicial Circuit



Florida House of Representatives

Representative Holly Raschein

District 120

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Email: Holly.Raschein@myfloridahouse.gov

June 25, 2015

Steven Broeckaert
Media Bureau Chief
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Mr. Broeckaert,

I write to you today in support of WEYW-Channel 19 Key West's must carry request. WEYW provides quality local programming that disseminates very valuable information to our local community. So often, Monroe County gets lumped in with our neighbors to the north, Miami-Dade, or forgotten about altogether. The two stations currently licensed in Key West, WSNB and WGEN, broadcast in Spanish, which fails to meet the needs of Monroe County's predominantly English-speaking population. Having a dedicated media outlet focused on Florida Keys-specific issues is an invaluable resource for our community.

Thank you for the opportunity to share my thoughts on this issue and please do not hesitate to contact me should you have any questions.

Regards,

A handwritten signature in cursive script, appearing to read "Holly Raschein".

Holly Raschein
State Representative
District 120

*Committees: Appropriations Committee, Highway and Waterway Safety Subcommittee,
Regulatory Affairs Committee and Veteran and Military Affairs Subcommittee*

CERTIFICATE OF SERVICE

I, Malinda Markland, do hereby certify on this 30th day of June, 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:

William Lake, Chief, Media Bureau*
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Shaun Maher, Esq.*
Federal Communications Commission
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Washington, DC 20554

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Cable and/or Video Franchising
Division of Corporations
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Monroe County Administrator's Office
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Key West, FL 33040

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*Also Via E-mail


Malinda Markland