

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

In re Matter of)
)
Optical Telecommunications, Inc.) MB Docket No. 14-258
)
) CSR-8895-C
Complaint Concerning Retransmission of)
WXCW(TV), Naples, FL)

To: The Secretary, Federal Communications Commission

Attn: Chief, Media Bureau

SUPPLEMENTAL RESPONSE OF SUN BROADCASTING, INC.

Sun Broadcasting, Inc. (“SUN”), licensee of full-power television station WXCW(TV), Naples, Florida, by its attorneys, and pursuant to Section 76.7 of the Commission’s rules , 47 C.F.R. § 76.7, hereby provides this response to the March 3, 2016 letter from DISH Network L.L.C. responding to the Commission’s letter of inquiry in this proceeding (the “DISH Letter Response”).¹

In short, DISH has confirmed what SUN has demonstrated throughout this proceeding—OpticalTel had no authority to retransmit the signal of WXCW and has violated Section 325(b) of the Communications Act of 1934, as amended (the “Act”), and Section 76.65 of the

¹ Although Section 76.7 contains provisions regarding the Commission’s ability to seek additional information, it does not explicitly set forth a procedure for parties to respond to information submitted in response to such requests. Accordingly, to the extent necessary, SUN hereby respectfully requests authority to submit this supplemental response.

Commission's rules. While OpticalTel consistently has sought to shift blame, evade responsibility and craft novel legal theories in an attempt to escape the consequences of its blatant violation, the facts are clear: SUN never gave its consent to the retransmission of WXCW, and OpticalTel's agreements with DISH did not provide it with any authority to retransmit the station's signal—at least not until after the complaint had been filed and OpticalTel entered into a new agreement with DISH.

Specifically, DISH confirms that, prior to December 12, 2014, OpticalTel was receiving broadcast programming pursuant to the Transport Option,² and that, under the Transport Option, “the bulk distributor is responsible for securing any necessary rights to provide the local broadcast stations(s) to its end user customers.”³ Indeed, not only has DISH now refuted OpticalTel's claim that its authority to retransmit WXCW came through DISH, but the agreement that OpticalTel itself submitted in this proceeding explicitly states that the agreement did not convey the underlying authority to retransmit any broadcast programming—and that it was the responsibility of OpticalTel to obtain those rights. Specifically, Schedule 1 of the Sail Harbour Bulk Programming Services Agreement that OpticalTel submitted to the Commission contains the following provision:

Carriage of Local channels requires that the Operator obtains retransmission consent from the local broadcaster. Upon EchoStar's request, Operator shall provide evidence of retransmission consent from the local broadcaster or evidence that no retransmission consent is required. Failure to comply with the foregoing requirements will be a default of this Agreement in accordance with Section 12.1.⁴

² See DISH Letter Response at 5.

³ DISH Letter Response, Exhibit A: Declaration of Lee Hirsch, at ¶5.

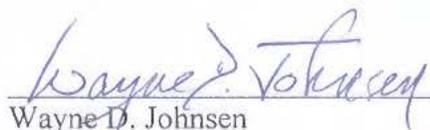
⁴ See, Letter from Arthur H. Harding to Lynne Montgomery, Esq, dated October 15, 2015, at Exhibit 1, Sail Harbour Bulk Programming Services Agreement, at Schedule 1, pp. 3-4 (MB Docket No. 14-258, Oct. 15, 2015); see also, DISH Letter Response at 5 (Noting that OpticalTel's retransmission of local broadcast stations fell under the Transport Option, and referencing the Sail Harbour Bulk PSA at Schedule 1, pp. 3-4. Although the DISH Letter

Thus, there can be no question that OpticalTel had no express authority to retransmit WXCW. Moreover, as SUN has demonstrated previously, there is no merit to any of OpticalTel's other arguments to support a claim that the retransmission of WXCW without consent was not a violation of the retransmission consent requirements.⁵

In sum, OpticalTel has provided no legitimate basis to support its claim that it could retransmit the station without SUN's express written consent. Accordingly, SUN respectfully requests that the Commission find that OpticalTel violated the retransmission consent requirements and impose the maximum permissible forfeiture.

Respectfully submitted,

SUN BROADCASTING, INC.



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March 14, 2016

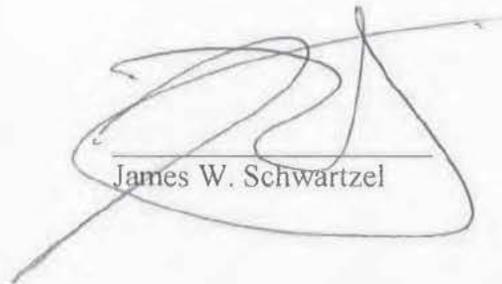
Response has redacted the Sail Harbour Bulk PSA in its entirety, it appears to be the same document that OpticalTel submitted to the Commission in its prior response.).

⁵ In its reply comments in this proceeding, SUN demonstrated, among other things, that OpticalTel is not eligible for the "MATV exception" set forth in Section 76.64 of the Commission's rules, and that there is no basis for OpticalTel's claim that SUN somehow defaulted to must-carry status by virtue of OpticalTel's after-the-fact registration as a cable operator.

DECLARATION

I, James W. Schwartzel, hereby declare under penalty of perjury as follows:

1. I am President of Sun Broadcasting, Inc., licensee of Television Station WXCW(TV), Naples, Florida.
2. I have read the foregoing Supplemental Response of Sun Broadcasting, Inc.
3. The facts contained therein are true and correct to the best of my knowledge, information, and belief.
4. The Supplemental Response is grounded in fact, and is not interposed for any improper purpose.


James W. Schwartzel

March 11, 2016

CERTIFICATE OF SERVICE

I, Jacquelyn Martin, hereby certify that on this 14th day of March, 2016, a copy of the foregoing Supplemental Response of Sun Broadcasting, Inc. has been served by first-class mail on the following:

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