

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	CSR 8920-N
United Communications Corporation)	Docket 16-54
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)	
)	
To: Chief, Media Bureau)	

OPPOSITION TO PETITION FOR SPECIAL RELIEF

New Ulm Telecom, Inc.

March 31, 2016

Introduction.

On behalf of New Ulm Telecom, Inc. ("NU-Telecom"), the undersigned is filing this Opposition to the Petition for Special Relief filed by United Communications Corporation, the licensee of KEYC-TV, Mankato, Minnesota ("KEYC Petition"). KEYC-TV has a dual affiliation with the CBS Television Network and Fox Network. The KEYC Petition seeks to prove, utilizing Nielsen Data as set forth in Exhibit 1 thereto, that in a number of communities, certain television stations originally listed 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. If the KEYC Petition successfully demonstrates the lack of significantly viewed status using the methodology in the Commission's Rules, Section 76.54 (b) and (c), absent any other issues, KEYC is entitled to a waiver of Sections 76.92(f) and 76.106(a). Therefore, it may assert any rights it has to network non-duplication and syndicated exclusivity protection under Sections 76.92 and 101 respectively.

NU-Telecom respectfully submits that the KEYC Petition fails to support its claim with regard to WCCO-TV (CBS), Minneapolis, MN, and presents scant evidence with regard to KMSP-TV (Fox), Minneapolis, MN which should be outweighed by the negative impact on NU- Telecom subscribers.

NU-Telecom Impacted Communities and Opposition.

(a) Station WCCO-TV (CBS), Minneapolis, Minnesota.

The KEYC Petition fails to support its claim that WCCO-TV is no longer significantly viewed in Hanska, Minnesota. Hanska is listed in the main body of the KEYC Petition and under Nielsen's Exhibit 1, zip code 56041. As required by Section 76.54(b) and relevant Commission decisions noted below, a survey of two (2) periods per year for two (2) consecutive years is required to support such a claim. Further, the surveys in each year must be at least one (1) month apart and only one (1) survey may be between April and September.

The Nielsen survey for Hanska fails to include any diaries (in-tab households) for May, 2014, and, therefore, does not fulfill the requirements of Section 76.54(b). The Commission has clearly stated that it "must reject showings... because there are no in-tab households for one of the survey periods and the claimed average is solely the result of one survey period." [(See WTNH Broadcasting, Inc., 27 FCC Rcd 15895, 15902 (MB 2012) Chesapeake Television Licensee, LLC, 30 FCC Rcd 6455, 6462 (MB20150)]. Therefore, KEYC has not sustained its burden of proof and the KEYC Petition with respect to Hanska (zip code 56041) must be denied.

(b) KMSP-TV (FOX). Minneapolis.

The KEYC Petition also fails to show that KMSP-TV is no longer significantly viewed in New Ulm, MN (zip code 56073). It fails to meet the test set forth above pursuant to Section 76.54(b) noted above. Although the KEYC Petition has presented the requisite number of sweeps from a two (2) year period, February and November, 2013 and February and May, 2014, the November, 2013 period has only one in-tab diary - all the other sweep periods have two (2) in-tab diaries. In WINS Hearst-Argyle Television, Inc. 26 FCC Rcd 4044 4052 (MB 2011) the Commission noted that "for November 2005, the result is based on only one household and not the average of, an extremely unreliable statistic since it is based on the viewing of one household and not the average of a sample of households."

NU-Telecom asks the Commission to reject this showing as insufficient based on the single diary for one period and a mere two diaries for each additional sweep period. To find otherwise will result in a great disservice to the subscribers in New Ulm and other communities served by this system and will impose substantial expense and great technical difficulties as discussed below.

The New Ulm system serves subscribers in the communities of New Ulm, Searles, Essig, and Courtland, MN. The KEYC Petition does not attempt to challenge the significantly viewed status of KMSP-TV in Searles, Essig, and Courtland, MN. If the KEYC Petition is successful, the subscribers in Searles, Essig, and Courtland, MN that are entitled to receive KMSP-TV will be penalized unless NU-Telecom commits significant sums to sever the New Ulm channel line-up from Searles, Essig, and Courtland, MN.

The NU-Telecom system is a state of the art Internet Protocol (IP) based system. In order to comply with any demands for network non-duplication and syndicated exclusivity protection sought by KEYC, NU-Telecom will have to install a hardware solution such as a TelVue HyperCaster at a cost of \$16,000 with an additional cost of at least \$5,000 for the necessary servers. That equipment has to be installed at the headend to allow the creation of alternate channel feeds for KMSP-TV that black out the programming requested by KEYC in New Ulm, and permit the full line-up in those communities where all KMSP-TV programming is permitted. This does not include personnel costs to program and maintain this highly complicated system.

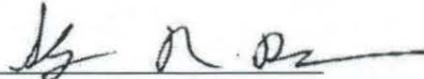
Given the scant number of the in-tab diaries discussed above and the on-going cost of compliance, denying the KEYC Petition with regard to KMSP-TV is warranted. In the alternative, NU-Telecom requests a waiver allowing it to continue carriage KMSP-TV in its entirety in the City of New Ulm.

Conclusion.

For the foregoing reasons, NU-Telecom asks the Commission to deny the KEYC 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 in its entirety in the City of New Ulm, MN.

Respectively submitted,

NEW ULM TELECOM, INC.

By: 

Stephen R. Ross, Esq.

1134 East Lexington Drive, Suite 5
Glendale, California 91206

Date: March 31, 2016

Its: Counsel

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New Ulm Telecom, Inc.

March 30, 2016

DECLARATION OF KATHY LUND

I, Kathy Lund, Regulatory and Administrative Manager, New Ulm Telecom, Inc. have read the Opposition to Petition for Special Relief to which this Declaration is attached and certify that the facts contained therein are true and correct to the best of my knowledge, information and belief.



Kathy Lund, Regulatory and Administrative Manager
New Ulm Telecom, Inc.

Date: March 30, 2016

CERTIFICATE OF SERVICE

I, Emily Hiebeler, Legal Assistant for Stephen R. Ross, Esq. hereby certify that on March 31, 2016, a copy of the foregoing "Opposition to Petition for Special Relief" was deposited in the U.S. mail, postage prepaid, addressed to the following:

CC VIII Operating LLC
12405 Powerscourt Drive
St. Louis, MO 63131

KAAL Television
1701 10th Place NE
Austin, Minnesota 55912

Midcontinent Communications
390 North Louise Avenue
Sioux Falls, South Dakota
57107

Channel 29 Stations WFTC
and KMSP-TV
11358 Viking Drive
Eden Prairie, Minnesota 55344

Cable Franchise Authority
City of North Mankato
1001 Belgrade Avenue
North Mankato, MN 56002

Cable Franchise Authority
Madelia City Hall
116 West Main Street
Madelia, MN 56062

Cable Franchise Authority City
of Madison Lake
525 Main Street P.O. Box 295
Madison Lake, MN 56063

Consolidated
Communications
221 East Hickory Street
Mankato, MN 56001

KIMT Television
112 N Pennsylvania Avenue
Mason City, Iowa 50401

Comcast
One Comcast Center
Philadelphia, PA 19103

Cable Franchise Authority
Amboy City Hall
244 East Maine Street
P.O. Box 250
Amboy, MN 56010

Cable Franchise Authority
City of Hanska
P.O. Box 91 Hanska, MN
56041

Cable Franchise Authority
St. James City Hall
124 Armstrong Blvd.S.
P.O. Box 70
St. James, MN 56081

Fort Randall Cable Systems,
Inc.
1700 Technology Dr. NE
Suite 100
Willmar, Minnesota 56201

Mediacom Minnesota LLC
One Mediacom Way
Mediacom Park, New York 10918

WCCO-TV
90 South 11th Street
Minneapolis, Minnesota 55403

Cable Franchise Authority
City of Mankato
10 Civic Center Plaza
Mankato, MN 56001

Cable Franchise Authority
Good Thunder City Hall
130 South Ewing Street
P.O. Box 97
Good Thunder, MN 56037

Cable Franchise Authority
Lake Crystal City Hall
100 East Robinson Street
P.O. Box 86
Lake Crystal, MN 56055

Cable Franchise Authority
City of Sleepy Eye
200 Main Street East
Sleepy Eye, MN 56085

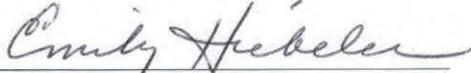
DirecTV
2260 E. Imperial Hwy
El Segundo, CA 90245

Cable Franchise Authority
City of New Ulm
100 N. Broadway St.
New Ulm, MN 56073

Dish Corporate Office
4700 S. Syracuse Street
Suite #450
Denver, CO 80237

Cable Franchise Authority
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2 East Central
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By: 
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Stephen R. Ross
March 31, 2016