

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

Petition for Rulemaking to Amend the)
 Commission's Rules to Extend its Network)
 And Non-network Territorial Exclusivity,)
 Syndicated Exclusivity, and Network)
 Non-duplication Protection Rules to)
 Low-power, Class A, and Noncommercial)
 Broadcast Stations)

RM-10335 /

RECEIVED

JAN 03 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF TIME WARNER CABLE

Time Warner Cable ("TWC" or "Time Warner"), by its attorneys and pursuant to Section 1.405(b) of the Commission's rules,¹ hereby submits these Reply Comments in the above-captioned matter. TWC's Opposition² demonstrated that the Petition for Expedited Rulemaking ("Petition") filed by Venture Technologies Group, LLC ("VTG") is an attempt to achieve back door must-carry status where it has no mandatory carriage rights. TWC explained that VTG has not demonstrated why the private matter cited in its Petition, involving the efforts of one low power television ("LPTV") station, WAWA-LP, to obtain carriage on one cable system, Time Warner's Syracuse, New York system (the "System"), creates the need for VTG's proposed sweeping rulemaking. TWC also explained that VTG's Petition fails to conform to the Commission's rules and is thus fatally defective. Accordingly, VTG's Petition should be dismissed or denied.

¹ 47 C.F.R. § 1.405(b).

² Opposition to Petition for Rulemaking, RM-10335, filed by Time Warner Cable, Dec. 19, 2001 ("Opposition").

I. ARGUMENT

A. The Spartan Record in this Proceeding Clearly Does Not Support the Sweeping Rule Changes Proposed by VTG.

Despite the exceedingly broad scope of VTG's proposal, VTG's Petition resulted in only a handful of comments, oppositions and letters (including VTG's own comments), most of them only a few pages or less in length. Indeed, several of these comments were filed by the same law firm and are nearly identical. Obviously, this demonstrates an utter lack of interest in VTG's proposal. This level of indifference is consistent with the moribund proposals in Docket 87-24 that have appropriately been regarded as unworthy of further Commission attention for over a decade.³ In short, as TWC demonstrated in its initial comments, there is simply no need for the sweeping rule changes proposed by VTG, modifications that would undoubtedly cause a chain reaction of anti-consumer unintended consequences.

B. The Few Comments Received Agree That VTG Is Merely Seeking A Back Door Avenue To Obtain Mandatory Carriage.

Time Warner pointed out in its Opposition that the true motivation of VTG's Petition involves its localized desire for WAWA-LP to gain carriage on Time Warner's System.⁴ In essence, as Time Warner demonstrated, VTG seeks to have the Commission, by rulemaking applicable to thousands of stations and cable systems, give VTG a private financial boost and transform a low power television ("LPTV") station into a full power station for must-carry purposes.⁵ Several commenters agreed, candidly admitting, as

³ Indeed, VTG's Petition has received no support from noncommercial television stations.

⁴ Opposition at 2-3.

⁵ Opposition at 4-5.

VTG had done,⁶ that VTG's Petition is really about expanding must-carry rights for LPTV stations such as WAWA-LP.⁷ However, as TWC explained in its Opposition, the Cable Television Consumer Protection and Competition Act of 1992 severely limits must-carry rights for LPTV stations,⁸ in keeping with LPTV's secondary service status.⁹ It is clearly inappropriate to use the Commission's rulemaking process to contravene express statutory language and provide expanded carriage rights for LPTV stations beyond congressional intent.¹⁰

⁶ Petition at 2.

⁷ See Comments of the Association of Local Television Stations, Inc., filed December 18, 2001, at 3; Comments in Support of Petition for Rule Making, filed by Equity Broadcasting Corporation, Dec. 18, 2001 at ¶ 3 ("Equity Comments") ("if the cable system carries the distant signal and does not black out the duplicative programming, the low power station has no ammunition to ever get on the cable systems because there are no demands by the subscribers to 'see their favorite show that only the local low power broadcaster can provide'"); Comments of Henry J. McGinnis, filed Dec. 20, 2001, at 2 ("McGinnis Comments"); Statement of Elliot Block, filed Dec. 18, 2001, at ¶ 1 ("Block Statement"). Time Warner notes that, by letter dated January 2, 2002, McGinnis withdrew its Comments.

⁸ 47 U.S.C. §§ 534(c), (h)(2); 47 C.F.R. §§ 76.55(d), 76.56(b).

⁹ An Inquiry into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System, Report and Order, 51 RR 2d 476 at ¶ 17 (1982) ("LPTV R&O"); Letter from Univision, Inc. Concerning the Applicability of 47 C.F.R. Sec. 73.658(j) and 46 C.F.R. Sec. 73.658(k), 4 FCC Rcd 2417 at ¶ 11 (1989); 47 C.F.R. § 76.55(d)(6); H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 74 (1992); Opposition of the National Cable & Telecommunications Association to Petition for Rulemaking, filed Dec. 19, 2001 ("NCTA Opposition"), at 2.

¹⁰ See, e.g., Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, Memorandum Opinion and Order, 9 FCC Rcd 6723 at ¶41 (1994) ("We agree with NCTA that the provisions of the 1992 Cable Act [relating to LPTV must-carry rights] may not be amended by the Commission through the rule making process.")

C. Class A Stations Have No Greater Must-Carry Rights Than LPTVs.

As TWC explained in its Opposition, Class A television stations have the same limited must-carry rights as LPTV stations.¹¹ The Commission has previously come to the same conclusion, noting that Congress has limited must-carry rights to “full power television broadcast” stations.¹² Thus, attempts by some commenters to distinguish the two and grant increased exclusivity rights to Class A stations¹³ are unavailing. Moreover, it is disingenuous for Polar Broadcasting, Inc. to claim in its Statement that “[t]he exclusivity rules are independent of the must-carry rules and do not in any way expand the rights of any Class A or LPTV station to be carried on cable.”¹⁴ In addition to the commenters listed herein who conceded that VTG’s Petition is really about obtaining *de facto* must-carry rights, one need only look at the Petition itself, which states: (1) “VTG approached Time Warner Cable ... to negotiate for cable carriage;” (2) “Time Warner, however, opted to import UPN superstation WSBK . . .” and (3) “If WAWA-LP was a full-power station, it could invoke the protection of the Commission’s network non-duplication rules and prevent Time Warner from importing WSBK.”¹⁵ Obviously, this Petition is about must-carry, and Class A stations do not have greater statutory must-carry rights than LPTV stations.

¹¹ Opposition at n.35.

¹² Establishment of a Class A Television Service, Memorandum Opinion and Order on Reconsideration, 23 CR 893, 2001 FCC LEXIS 2047 at ¶¶ 38-40 (2001).

¹³ See, e.g., Statement in Support of Petition for Rule Making, filed by Polar Broadcasting, Inc., Dec. 18, 2001, at ¶ 4 (“Polar Statement”); Equity Comments at ¶ 4; Statement in Support of Petition for Rule Making, filed by the Community Broadcasters Association, Nov. 13, 2001 at ¶ 9 (“CBA Statement”).

¹⁴ Polar Statement at ¶ 3.

¹⁵ Petition at 2.

D. VTG And Other LPTV Stations Already Enjoy The Exclusivity They Bargained For.

Several commenters argue that LPTV stations should be allowed to enjoy the benefits of exclusivity that they have bargained for in the marketplace.¹⁶ However, the only legitimate exclusivity they have bargained for is against other local broadcast stations. LPTV stations never could have reasonably bargained for non-dup and syndex rights *vis-a-vis* distant stations, because LPTV licensees have never been entitled to such protection. As Time Warner noted in its Opposition, WAWA-LP's purchase price undoubtedly reflected its limited rights.¹⁷ Thus, grant of syndex and non-dup rights would be a windfall for LPTV stations, beyond anything reasonably bargained for in the marketplace.

In sum, VTG's few supporters share its narrow desire to increase the must-carry rights of LPTV stations through the back door of exclusivity rights. The filings in this proceeding demonstrate that the broad rulemaking proposed by VTG is unwarranted. Accordingly, VTG's Petition should be dismissed or denied. Undersigned counsel have read the foregoing Opposition and to the best of such counsel's knowledge, information and belief formed after reasonable inquiry, this submission is well grounded in fact and is

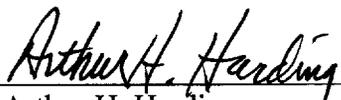
¹⁶ See Polar Statement at ¶¶ 1-2, 4; McGinnis Comments at 2-3; CBA Statement at ¶ 2; Block Statement at ¶ 3.

¹⁷ See Opposition at 4; NCTA Opposition at 2, 3.

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,

TIME WARNER CABLE

By: 
Arthur H. Harding
Matthew D. Emmer

Steven N. Teplitz
Vice President and Associate
General Counsel
AOL Time Warner Inc.
800 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20006

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 939-7900

Its Attorneys

Date: January 3, 2002

CERTIFICATE OF SERVICE

I, Kyle A. Baker, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Reply Comments of Time Warner Cable" was served this 3rd day of January 2002, via first class mail, upon the following:

Paul Koplin
President
Venture Technologies Group, LLC
5670 Wilshire Boulevard
Suite 1300
Los Angeles, CA 90049

Robert E. Branson
Vice President, General Counsel
Association of Local Television Stations,
Inc.
1320 19th Street, N.W., Suite 300
Washington, DC 20036

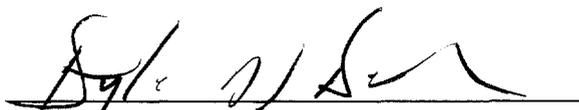
Peter Tannenwald
Jason S. Roberts
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, DC 20036-3101
Counsel for Polar Broadcasting, Inc.

Peter Tannenwald
Jason S. Roberts
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, DC 20036-3101
Counsel for Elliot Block

Lori M. Withrow
General Counsel
Equity Broadcasting Corporation
#1 Shackelford Drive, Suite 400
Little Rock, AR 72211

Denise P. Moline, Esq.
PMB #215
1212 S. Napier Blvd., Suite 119
Naperville, IL 60540

Peter Tannenwald
Jason S. Roberts
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, DC 20036-3101
Counsel for the Community Broadcasters
Association



Kyle A. Baker