

January 26, 2012

**Via ECFS**

Marlene H. Dortch, Esq.  
Secretary  
445 12th Street, SW  
Washington, DC 20554

**Re: Petition of KVOA Communications Inc. for Finding of Bad Faith  
Retransmission Consent Negotiations by Time Warner Cable  
*Supplement to the Record*  
MB Docket No. 12-15; CSR-8578-C**

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Dear Ms. Dortch:

KVOA Communications Inc (“Cordillera”), by its attorneys, hereby submits this supplement for the record in the above-referenced proceeding. As of today, Time Warner Cable’s (“TWC”) Corpus Christi cable television subscribers have been deprived for 44 days of local NBC affiliate KRIS-TV, local CW affiliate KRIS-D2, local Telemundo affiliate KAJA, and local independent station KDF-TV (collectively, the “Stations”). Unfortunately, TWC’s recent behavior suggests there is no end in sight to this dispute and that only Commission action can get TWC back to the negotiating table.

Since Cordillera filed its Petition requesting a finding of bad faith negotiations, TWC has continued its pattern of simply refusing to negotiate. On January 10, 2012, Cordillera made its latest offer of retransmission consent terms.<sup>1</sup> In the 16 days since Cordillera communicated that offer, TWC has failed to provide any counter-offer or indicate any willingness to continue negotiating. Rather than find time to propose market-supported terms for carriage of the Stations, TWC has concentrated its effort on raising tenuous objections to Cordillera’s advertising, providing unconvincing justifications for its own false advertising, and complaining about Cordillera’s decision to seek relief at the Commission. TWC’s cable television customers are about to miss the Super Bowl, but TWC can’t be bothered to make a reasonable, market-based counter-offer. As the brief summary below shows, the substance of the communications between the parties since Cordillera filed the Petition demonstrates the lengths to which TWC appears willing to go to avoid bargaining in good faith for carriage of the Stations.

TWC’s first response to Cordillera’s January 10 offer was to open a new front in the parties’ dispute by claiming Cordillera’s advertising was actionably false under federal and state law. On January 13, 2012, Time Warner’s corporate litigation counsel, Michael W. Quinn, sent Cordillera a cease and desist letter implausibly claiming that Cordillera’s messages to consumers

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<sup>1</sup> This counter-offer was in response to TWC’s January 9, 2012 offer described in the Petition.

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were misleading because Cordillera told viewers that, absent a new retransmission consent agreement, Time Warner customers could not watch the Super Bowl.<sup>2</sup> While Cordillera expects any reasonable Corpus Christi viewer would understand that it meant Time Warner's cable customers could not watch the Super Bowl on television, in the spirit of good faith, Cordillera modified its messages to clarify this point. Cordillera notified TWC of these changes on January 17, 2012, and also asked TWC to cease making its false claims that Cordillera forced TWC to drop the Stations and that Cordillera was demanding a 400% increase in the price TWC currently pays for carriage of the Stations.<sup>3</sup>

Cordillera's January 17 Letter prompted two responses from TWC, but unfortunately neither included any effort to bring the parties closer to agreement. First, on January 19, 2012, TWC's lead negotiator in this matter, Alexis Johnson, sent an email to Cordillera expressing surprise and disappointment that Cordillera sought enforcement of its rights before the Commission.<sup>4</sup> Mr. Johnson then proceeded to offer a lengthy defense of TWC's claim that Cordillera was demanding a 400% rate increase. [\*\*\*Begin Confidential Information\*\*\*] 



[\*\*\*End Confidential Information\*\*\*] These two facts confirm that TWC's 400% claim is at best extremely misleading because it compares apples to oranges and fails to accurately portray to the public the actual increase in the value of what Cordillera is proposing that TWC pay for retransmission consent. TWC's refusal to correct the public record, particularly in view of Cordillera's willingness to change public statements that were not likely to mislead anyone, is simply more evidence of its refusal to conduct negotiations in good faith. After offering a number of other justifications for TWC's position, Mr. Johnson – without addressing Cordillera's January 10 counter-offer – simply renewed TWC's request that Cordillera accept TWC's offer of January 9, 2012.

Mr. Quinn next responded to Cordillera on January 20, 2012, formally rejecting Cordillera's request that TWC cease its false advertising campaign.<sup>5</sup> Mr. Quinn largely repeated Mr. Johnson's defense of TWC's 400% claim, although he conspicuously omitted the undeniable concessions made by Mr. Johnson. In addition, Mr. Quinn defended TWC's claim that Cordillera "forced" TWC to drop the Stations, despite his acknowledgement that Cordillera offered TWC an extension of carriage. Faced with the facts that TWC had available to it a no-

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<sup>2</sup> See Exhibit 1.

<sup>3</sup> See Exhibit 2 (the "January 17 Letter").

<sup>4</sup> Cordillera continues to seek a negotiated settlement of this retransmission consent dispute and restoration of the Stations to TWC's Corpus Christi cable system. It therefore has refrained from including the emails exchanged between the parties' negotiators. That correspondence is available at the Commission's request.

<sup>5</sup> See Exhibit 3.

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strings-attached offer to extend retransmission consent for the Stations, but chose to drop the Stations because Cordillera would not agree to a longer extension, most reasonable consumers would conclude that TWC made a choice to drop the Stations, not that it was “forced” to do so. TWC’s continued claims that its advertising – which entirely omits these relevant facts – does not mislead the public are frankly not credible.

While TWC continues to posture, its Corpus Christi cable customers are deprived of important local news, weather, sports, and information programming provided by the Stations, as well as the convenient source of NBC and CW network programming they have come to expect. Cordillera continues to seek to negotiate with TWC and is hopeful that TWC will return to the negotiating table and conclude a deal. TWC’s actions since Cordillera filed the Petition unfortunately suggest otherwise. Therefore, Cordillera must renew its request for immediate Commission action requiring TWC to bargain with Cordillera in good faith toward renewal of the parties’ retransmission consent agreement.

Sincerely,



Michael D. Basile  
Counsel for KVOA Communications, Inc.

Cc: William T. Lake  
Suzanne M. Tetreault  
Michelle Carry  
Nancy Murphy  
Mary Beth Murphy  
Steven A. Broeckaert  
Ronald Parver  
Cristiana Pauze  
Alexis Johnson

**EXHIBIT 1**

**Time Warner Letter Dated January 13, 2012**



Michael W. Quinn  
Vice President & Assistant Chief Counsel, Litigation  
Law Department

January 13, 2012

**VIA FACSIMILE AND FEDERAL EXPRESS**

Tim Noble  
KRIS Communications  
President and General Manager  
301 Artesian Street  
Corpus Christi, TX 78401

***Re: False and Deceptive Advertising***

Dear Mr. Noble:

It has come to my attention that KRIS Communications is falsely running a claim on its website, as well as that of KZTV, that is designed to mislead Time Warner Cable football fans into believing they will not be able to watch the Super Bowl this year. Specifically, your website contains the claim that "it is highly unlikely that there will be an agreement in time for the Super Bowl *to be seen by Time Warner customers.*"

As you are well aware, even apart from whether we conclude a new retransmission consent agreement, NBC will be streaming the Super Bowl on the Internet for free and Time Warner Cable customers will be able to watch the game. Moreover, the game will be broadcast by KRIS free over the air to any customers, including Time Warner Cable customers, who have an antenna. Thus, the claim on your and KZTV's websites, which implies to the contrary, is in direct violation of the Lanham Act, as well as state and local consumer protection laws. Accordingly, we demand that you immediately cease and desist running this, or any similar false claim in any media outlet.

Please advise us by January 17, 2012 that you have removed this claim from the marketplace. In the meantime, we reserve all legal rights and remedies available to us with respect to this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Michael W. Quinn" followed by a circular initials mark.

Michael W. Quinn

**EXHIBIT 2**

**KRIS-TV Letter Dated January 17, 2012**

January 17, 2012

**VIA FACSIMILE AND FEDERAL EXPRESS**

Michael W. Quinn  
Vice President & Assistant  
Chief Counsel, Litigation  
Law Department  
Time Warner Cable  
13820 Sunrise Valley Drive  
Herndon, VA 20171

***Re: Response to Advertising Allegations***

Dear Mr. Quinn:

We have reviewed your letter of January 12, 2012 and are disappointed that Time Warner Cable ("Time Warner") has chosen to add threats of meritless legal claims to the list of bad faith negotiating tactics it has employed to date in its effort to obtain a below-market retransmission consent deal for KRIS Communications' ("KRIS") Corpus Christi television stations. Our client's public statements about this dispute are neither deceptive nor misleading, and they do not violate the Lanham Act or state or local consumer protection laws. Any reasonable viewer, upon seeing the passage quoted in your letter, or any other public statements by KRIS, would conclude correctly that they will be unable to watch the Super Bowl using the cable television services they purchase from Time Warner Cable. The fact is that Time Warner customers will not be able to watch the Super Bowl using their cable television service unless Time Warner concludes a retransmission consent deal with KRIS. No law prohibits KRIS from informing your company's subscribers of that fact.

While KRIS's public statements about this dispute have been entirely accurate, Time Warner's have not. Time Warner has issued repeated public statements that KRIS "forced" Time Warner to drop its stations, when the truth is that KRIS offered Time Warner a reasonable, no-strings-attached extension that would have kept the stations on Time Warner's cable systems. Similarly, Time Warner repeatedly has stated that KRIS is demanding a 400% rate increase, but KRIS has no idea how Time Warner arrived at that figure, which has no basis in reality. Your company chose to create a public showdown and now blames KRIS for instigating it.

Although our client's statements regarding this matter have been truthful and non-misleading in all respects, as a token of its continued good faith in seeking a mutually beneficial retransmission consent agreement with Time Warner, KRIS has made minor adjustments to its messaging to further clarify that the impasse will only affect the availability of Super Bowl programming over Time Warner's cable television system and that KRIS' stations will remain

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available to all over the air. Time Warner of course remains free to advertise the Internet availability of the Super Bowl, but this consideration has nothing to do with whether the event will be cablecast over Time Warner's cable systems.

Please advise us by January 20, 2012 that Time Warner has removed the false statements described above from all of Time Warner's public messaging regarding this matter. Regardless of your response, KRIS reserves all legal and equitable rights and remedies available to it under applicable law.

Sincerely,



Jason E. Rademacher  
Counsel for KRIS Communications

cc: Tim Noble  
President and General Manager  
KRIS Communications

**EXHIBIT 3**

**Time Warner Letter Dated January 20, 2012**



Michael W. Quinn  
Vice President & Assistant Chief Counsel, Litigation  
Law Department

January 20, 2012

**VIA FACSIMILE AND FEDERAL EXPRESS**

Jason Rademacher  
Senior Counsel  
Dow Lohnes PLLC  
1200 New Hampshire Avenue, NW, Suite 800  
Washington, DC 20036-6802

***Re: False and Deceptive Advertising***

Dear Mr. Rademacher:

Thank you for agreeing to make changes to KRIS Communications' ("KRIS") advertising. We will continue to monitor your advertising to make sure that KRIS and KZTV do not overstate the risks that TWC customers face.

As to your own cease and desist demands, I can only assume that you felt obligated to respond in kind because your claims about our advertising are meritless. For instance, you complain about TWC's claim that KRIS is demanding a 400% increase in licensing fees. As your client should be well aware, its initial compensation demands were well above what they are most recently, but even KRIS's most recent proposal seeks,

TWC

Therefore, your argument that our advertising claim "has no basis in reality" is baseless.

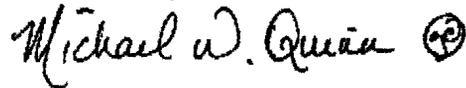
Similarly, with respect to your belief that we were not "forced" to drop KRIS, the facts are to the contrary. Your client proposed that we continue carriage of its stations for a period of time expiring on December 31, 2011, an expiration date that was unacceptable to us. We offered to maintain carriage of your clients' stations through at least March 2012, which proposal was rejected by your client. Because we did not reach an agreement with your client with respect to our continued carriage of its stations upon terms that were acceptable to either party, your client refused to provide authority to carry the stations pursuant to acceptable terms and therefore we were required to discontinue carriage of its stations. Thus our claim that KRIS forced TWC to remove it

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from our lineup is factually correct. Finally, for the record, although you accuse us of "instigating a public showdown," it was KRIS, not Time Warner Cable, that launched a widespread advertising and public communications campaign regarding our negotiations.

Accordingly, we see no reason to alter our advertising claims. We continue to reserve all legal rights and remedies available to us with respect to this matter.

Sincerely yours,



Michael W. Quinn