

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In Re:	)	
	)	
ITV of Buffalo, LLC	)	
Licensee of Station WBBZ-TV,	)	
Springville, New York	)	CSR -8644-M
	)	
v.	)	
	)	
Time Warner Cable	)	
	)	
	)	

To: The Secretary

**REPLY TO OPPOSITION TO MUST-CARRY COMPLAINT**

ITV of Buffalo, LLC (“ITV”) licensee of WBBZ-TV, Springville, New York, by its attorney, pursuant to Sections 76.7, 76.56 and 76.61 of the Commission's rules,<sup>1</sup> hereby submits its Reply to the “Opposition To Must-Carry Complaint” filed by Time Warner Cable Inc. (“TWC”) on June 28, 2012 in response to ITV’s “Must- Carry Complaint”. In support thereof, the following is respectfully shown:

1. ITV’s Complaint requested that the Commission (1) find that WBBZ-TV is entitled to carriage on TWC’s cable systems in the entire Buffalo DMA; (2) require that TWC respond to ITV’s notification, dated March 26, 2012, that it is not being carried by several TWC headends in its DMA; and (3) require that TWC respond to ITV’s requests, pursuant to Section 76.53(c) (3), that TWC enable ITV to cure its signal deficiencies. In its “Opposition” TWC states that (1) ITV’s Complaint is procedurally defective because ITV failed to serve the appropriate franchising authorities pursuant to Section 76(a)(3) of the rules; (2) that, should the

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<sup>1</sup> 47 C.F.R. §§ 76.7, 76.56 and 76.61.

Commission grant the Petition, the Commission must confirm that it is WBBZ-TV's obligation to provide the equipment necessary to deliver a good quality signal to the TWC headends as a prerequisite to carriage by TWC and (3) that, if WBBZ-TV is granted carriage on any TWC system prior to December 12, 2012, TWC has requested that the Commission hold that TWC may fulfill any carriage obligation by carrying WBBZ-TV solely in digital format consistent with the *Fifth Report and Order* in CS-Docket 98-120<sup>2</sup>.

3. First, ITV regrets its original service error and, as soon as we were made aware of the oversight, expeditiously moved to serve the parties. Consequently, undersigned counsel hereby certifies that he has, on July 9, 2012, rectified the error by serving each of the relevant franchising authorities, by first-class mail, postage pre-paid, with a copy of ITV's "Must-Carry Complaint". Further, in light of the belated service, ITV hereby stipulates that it will not interpose an objection if any of the franchise authorities files an opposition. As noted in *KM Television of El Dorado, LLC*, Order on Reconsideration, 21 FCC Rcd 3906, 3907 (MB 2006), and cited by TWC, "...in many situations in the past, the Commission has found that failure to comply with the Section 76.7 service requirement was not fatal when petitioners complied with the service obligation after failure was brought to their attention, citing *XYZ Television, Inc.*, 65 FCC 2d 459 (1977) ("We will not dismiss the petition in this case since XYZ subsequently served the required parties."). See also *MMK License LLC*, 22 FCC Rcd 795 (MB 2007) at Footnote 41 where the petitioner cured the error by belatedly serving the appropriate parties and the Commission deemed the issue "moot". In contrast, in *KM Television of El Dorado, supra*, the petitioner specifically declined to take this action. Consequently, ITV submits the

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<sup>2</sup> *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules*, 77 Fed. Reg. 36178, CS Docket 98-120, FCC 12-59 (rel. June 12, 2012) ("*Fifth Report and Order*").

Commission should not dismiss its Complaint in that it has cured the procedural error and the issue is, therefore, moot.

4. TWC's second request is equally a non-issue as ITV has stipulated, several times, that WBBZ-TV will provide to TWC, at WBBZ-TV's expense, whatever equipment is necessary to deliver a good quality signal to the TWC headends as a prerequisite to carriage by TWC.

5. ITV opposes TWC's request that the Commission require it to carry WBBZ-TV in only digital format as opposed to analog and digital because of the end of the transition period on December 12, 2012. As detailed at length in footnote 3 of ITV's Complaint, the previous licensee duly requested must-carry rights of TWC in the entire DMA in May, 2010 to no avail. In September, 2011, a year after it became licensee, ITV again formally requested mandatory carriage rights of TWC in the entire DMA. However, TWC has had, as is evident from its Opposition, no substantive reason for its failure to honor the licensees' requests to date. TWC's failure to carry WBBZ-TV in *both analog and digital*, in the entire DMA as required by the rules for the last two years has severely disadvantaged WBBZ-TV competitively in its market. Therefore, ITV requests that, should the Commission grant this request, it order TWC to carry WBBZ-TV in both digital and analog formats until December 12, 2012.

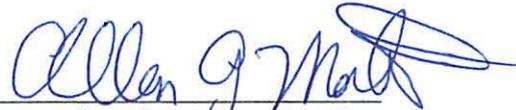
6. As ITV has cured the procedural deficiency in its original filing, the Complaint should not be dismissed. ITV requests that the Commission issue an order stating that (1) WBBZ-TV is entitled to carriage on TWC's cable systems in the entire Buffalo DMA in both analog and digital formats; (2) require that TWC respond to ITV's notification, dated March 26, 2012, that it is not being carried by several TWC headends in its DMA; and (3) require that

TWC respond to ITV's requests, pursuant to Section 76.53(c) (3), that TWC enable ITV to cure its signal deficiencies.

The undersigned certifies that he has read the submission and to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose.

Respectfully submitted,

ITV of Buffalo, LLC

By   
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July 9, 2012

## CERTIFICATE OF SERVICE

I, Allan G. Moskowitz, hereby certify that on this 9th day of July, 2012, copies of the foregoing "Reply to Opposition to Petition for Reconsideration" are being served by U.S. first-class mail postage prepaid, or by electronic mail\*, upon the following:

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