

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
MPS Media of Gainesville Licensee, LLP)	MB Docket No. 12-214
)	
For Waiver of §§76.92(f) & 76.106(a) of the Commission's Rules)	CSR-8692-N
)	
To: Chief, Media Bureau		

**OPPOSITION OF COXCOM, LLC
d/b/a COX COMMUNICATIONS GAINESVILLE/OCALA**

CoxCom, LLC., d/b/a Cox Communications Gainesville/Ocala (“Cox”), by its attorneys and pursuant to Section 76.7 of the Commission’s rules, 47 C.F.R. § 76.7, hereby opposes the Petition for Waiver of Sections 76.92(f) and 76.106(a) of the Commission’s Rules (the “Petition”) filed by MPS Media of Gainesville Licensee, LLP (“MPS”), licensee of WNBW-TV, Gainesville, Florida (“WNBW”).¹

INTRODUCTION

MPS seeks a system-wide waiver of the significantly viewed exception to the Commission’s network non-duplication and syndicated exclusivity rules. If granted, the waiver would allow MPS to require the deletion of both network and non-network programming broadcast by WESH(TV), Daytona Beach, Florida; WJXT(TV), Jacksonville, Florida; and WTLV(TV), Jacksonville, Florida (collectively, the “Stations”) in the Cox cable television system serving the communities of Gainesville, Newberry, Alachua City, and unincorporated Alachua County, Florida (the “Cable System”).² All the Cox Communities are located in Alachua County, Florida.

¹ MPS Media of Gainesville Licensee, LLP, MB Docket No. 12-214, CSR-8692-N (filed July 5, 2012) (the “Petition”); see Special Relief and Show Cause Petitions, Report No. 0379 (July 27, 2012). This Opposition is timely filed pursuant to an extension of time through September 5, 2012, to which Cox and MPS agreed and the Bureau approved.

² The Cable System includes four community units; namely, CUID Nos. FL0150 (Gainesville), FL1306 (Newberry), FL1249 (City of Alachua), and FL0340 (Unincorporated Alachua County) (collectively, the “Cox Communities”).

The Petition must be denied because the Nielsen Media Research “Significantly Viewed Study” (the “Survey”) MPS submitted to justify its waiver request fails to comply with the minimum requirements of Section 76.54(b) of the Commission’s rules and its associated precedents.³ In particular, the system-specific Survey: (i) fails to present separately the results of studies purportedly conducted in two consecutive years, which makes it impossible to tell whether the studies conducted in either year produced statistically valid results⁴; and (ii) fails to demonstrate whether each of the four Cox Communities served by the Cable System is proportionately represented in the Survey on the basis of its relative population in the system — or indeed whether each of those communities is even represented in the Survey at all.⁵ The Petition and the Survey therefore are fundamentally deficient under the Commission’s rules and should be summarily rejected. Moreover, pursuant to 47 C.F.R. § 76.106(a), WNBW is prohibited from exercising syndicated exclusivity against WJXT(TV) in unincorporated Alachua County and against WTLV(TV) in Gainesville, Alachua City, and unincorporated Alachua County because the stations’ signal contours cover portions of those communities. Thus, even if waiver of Section 76.106(a) could be granted for the syndicated programming that WESH(TV) broadcasts (which it cannot), that waiver must be denied with respect to WJXT(TV) in Alachua County and WTLV(TV) in Gainesville, Alachua City, and unincorporated Alachua County because WNBW has no syndicated exclusivity rights regarding those stations in those communities.

³ Cox also agrees with Orlando Hearst Television Inc. that MPS’s failure to serve all interested parties, among other procedural and substantive deficiencies, warrants dismissal of the Petition. *See* Orlando Hearst Television, Inc., Opposition to Petition for Special Relief, MB Docket No. 12-214, CSR-8692-N, filed Aug. 16, 2012, at 2-3 (citing 47 C.F.R. §76.7(a)(3); *RCN Corp.*, 25 FCC Rcd 5537 (Med. Bur. 2010)).

⁴ *See, e.g.,* *WTVG, Inc.*, 25 FCC Rcd 2665, 2666 at n. 12 (Med. Bur. 2010); *Gulf-California Broadcast Company*, 23 FCC Rcd 7406, 7409 nn.23-24 (Med. Bur. 2008), *recon, granted on other grounds*, 24 FCC Rcd 2738 (Med. Bur. 2009); *Journal Broadcasting Corp.*, 21 FCC Rcd 3471, 3474 at para. 8 (Med. Bur. 2006).

⁵ *See, e.g.,* *Virginia Broadcasting Corp.*, 21 FCC Rcd 3462, 3464 at para. 7 (Med. Bur. 2006), *reconsideration granted in part on other grounds*, 22 FCC Rcd 18109 (Med. Bur. 2007); *KATC Communications, Inc.*, 15 FCC Rcd 14743, 14744 at para. 5 (Med. Bur. 2000), *reconsideration denied*, 16 FCC Rcd 6861 (Med. Bur. 2001).

I. THE PETITION FAILS TO SATISFY THE MINIMUM REQUIREMENTS OF THE COMMISSION'S RULES.

The Bureau should summarily deny the Petition because the Survey impermissibly combines study results from multiple years and because the Survey fails to demonstrate whether each of the Cox Communities is represented in the Survey in proportion to its population or even whether each is included in the survey.⁶

The Commission's precedents require MPS to demonstrate pursuant to specific criteria that WESH(TV), WJXT(TV), and WLTV(TV) have failed to satisfy the Commission's significantly viewed standards over a two-year period based on over-the-air households in each of the Cox Communities served by the Cable System.⁷ Among other things, the data presented must be sufficient to demonstrate compliance with the requirements of Section 76.54(b) for each year's survey.⁸ Moreover, where, as in this case, a "cable system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to their population."⁹ The Commission's rules and precedents therefore required at a minimum that MPS provide sufficient data to demonstrate that: (1) each of the Stations failed to meet the relevant significantly viewed threshold over a two-year period using separate surveys for each year; and (2) the survey respondents were drawn proportionally from each of the Cox Communities based on each community's population as compared to the population served by the Cable System as a whole. The Petition fails both of these requirements.

⁶ MPS claims its Petition is supported by "a system-specific Significant Viewing Study." Petition at 5.

⁷ See *KCST-TV*, 103 FCC 3d 407 (1986); *WTVG, Inc.*, 25 FCC Rcd at 2666, n.12 (Med. Bur. 2010); 47 C.F.R. § 76.54(b). For network stations to be considered significantly viewed, survey results must show a three percent share of total viewing hours and a net weekly circulation of 25 percent, by at least one standard error. For non-network stations, a survey must show viewing that exceeds a two percent share of total viewing hours and a net weekly circulation of five percent, by at least one standard error. 47 C.F.R. § 76.5(i); see also, e.g., *Saga Broadcasting, LLC*, 26 FCC Rcd 16581, 16582 at para. 3 (Med. Bur. 2011).

⁸ *WTVG, Inc.*, 25 FCC Rcd at 2666, n.12.

⁹ 47 C.F.R. § 76.54(b).

A. The Survey Impermissibly Combines The Results Of Four Sweeps Periods In A Single Study And Fails To Include Zip Codes From All The Cox Communities.

The Bureau should deny the Petition because it aggregates the results of four sweeps periods in a single study, fails to present each year of Survey results separately, and fails to include zip codes for all the Cox Communities.

The Commission's precedents require that system-specific petitioners relying on Nielsen sweeps data submit data from at least two sweeps periods in each of two consecutive years, that the data from each of those years be presented separately,¹⁰ and that Nielsen include diaries from every community in the Cable System.¹¹

In this case, the Survey purports to identify zip codes associated with the communities served by the Cable System and derive the share of viewing hours and net weekly circulation for the Stations based on audience surveys Nielsen collected for other purposes.¹² The Survey, however, fails to include zip codes for all the Cox Communities, which makes impossible a determination of whether diaries from each of the Cox Communities were included.¹³ The Commission routinely rejects such Petitions.¹⁴

Moreover, the Survey provides three tables, one for each of the Stations, which include the combined results of four separate sweeps periods (July 2010, November 2010, May 2011, and November 2011, respectively). Each of these tables aggregates all the survey responses from the zip codes that were included in the four individual sweeps periods and calculates cumulative rating

¹⁰ See, e.g., *WTVG, Inc.*, 25 FCC Rcd at 2666, n.12 (“The criteria set forth in *KCST-TV* require that two separate surveys be performed pursuant to Section 76.54(b) in consecutive years. The provisions of Section 76.54(b) therefore apply to each year’s survey.”).

¹¹ *KATC*, 16 FCC Rcd 6861 at para. 12.

¹² See Survey, attached to Petition.

¹³ The Survey includes zip codes for Gainesville, Newberry, and Alachua City, but fails to include zip codes from much of Cox’s unincorporated Alachua County CUID. Moreover, most of the zip codes that were included in the Survey overlap areas within and without the Cox Communities, including zip codes, such as 32669, a significant portion of which is not even located in any of the Cox Communities. The Survey fails to identify the number of diaries reported in each of the Cox Communities.

¹⁴ In *KATC*, for example, the Bureau rejected a system-specific survey and observed that “[t]he failure of Nielsen to include diaries from every community in its audience sweep surveys is one of the major reasons parties have found it difficult to use Nielsen data initially gathered for other purposes in demonstrating significantly viewed status or the lack thereof.” *KATC*, 16 FCC Rcd 6861 at para. 12.

and share information data based on those responses. The Survey makes no distinction between results obtained for 2010 and results obtained for 2011.

As the Commission has recognized, the provisions of Section 76.54(b) of the rules apply to each year's survey.¹⁵ By presenting the 2010 and 2011 data in a single, undifferentiated table for each of the Stations, the Survey makes it impossible to determine whether both the 2010 and 2011 components of the Nielsen study comply with those requirements. The Commission's rule specifically requires that the data presented "include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level."¹⁶ From the data presented in the Survey, however, ascertaining whether the Survey meets this standard or whether Nielsen obtained a statistically valid survey sample in both 2010 and 2011 is impossible. WNBW acknowledges that it was required to submit more detailed data, and the Petition itself claims inaccurately that it has "submit[ed] the results for each of the individual sweeps periods."¹⁷ In fact, the Petition includes only aggregated data that does not satisfy the rules. For this reason alone, the Survey should be rejected and the Petition denied.

B. The Survey Fails To Demonstrate Proportionality As Required By The Commission's Rules.

The Bureau also should deny the Petition because the Survey fails to demonstrate the proportionality required under the Commission's rules for the requested system-wide waiver.¹⁸

Section 76.54(b) of the rules specifies that "[i]f a cable television system serves more than one community, a single survey may be taken, provided that the sample includes over-the-air television homes from each community that are proportional to the population."¹⁹ The Commission's cases confirm that a system-specific Survey must include: (1) over-the-air household

¹⁵ See, e.g., *Saga Broadcasting*, 26 FCC Rcd at 16852, n.10; *WTVG, Inc.*, 25 FCC Rcd at 2666, n.12.

¹⁶ See 47 C.F.R. § 76.54(b).

¹⁷ Petition at n.14.

¹⁸ See 47 C.F.R. § 76.54(b).

¹⁹ *Id.*

diaries from each community served by the cable system;²⁰ and (2) sufficient population data to demonstrate that the diaries included for each community are proportional to each community's share of the total population served by the cable system at issue.²¹ In *WGME License, LLC*, the Bureau recently reaffirmed the applicability and importance of the proportionality requirement:

Absent a correct diary placement, viewership levels in each of the communities are not adequately represented in the system-wide study. The proportionality requirement prevents the skewing of the submitted data by any significant variation among communities as to viewing habits and ensures that the inclusion or exclusion of specific communities does not affect the reported average audience statistics for the cable system.²²

The system-specific Survey included in the MPS Petition fails in all respects to meet the proportionality criteria set out in the Commission's rules and precedents. The Cox Cable System serves four separate communities, and MPS therefore is required to demonstrate that the Survey diaries were tabulated from over-the-air viewers in all four communities in proportion to each community's share of the entire population served by the Cable System.²³ The Survey, however, includes no information regarding either the community from which the diaries were taken or the relative population of the Cox Communities in the Cable System. All 117 diaries included in the Survey might have come from a single zip code, or might be equally represented among all the zip codes, or somewhere in between, but the Survey provides no way to tell. Indeed, inasmuch as the Survey contains only aggregate data from all the zip codes that were included in the Survey, it provides no basis for a determination that the sample even includes viewing households in each of the four Cox Communities served by the Cable System.²⁴ Moreover, the Survey includes no

²⁰ See, e.g., *Centex Television Limited Partnership, Order on Reconsideration*, 25 FCC Rcd 13526, 13531-32 at paras. 8-9 (Med. Bur. 2010) (denying reconsideration after petitioner's failed attempt to remedy data deficiencies); *KATC Communications, Inc.*, 15 FCC Rcd at 14744, para. 5, *recon. denied*, 16 FCC Rcd 6861; *KGWN-TV*, 15 FCC Rcd 14752 (Med. Bur. 2000) (rejecting survey for failing to associate zip code data with particular communities and failing to demonstrate proportionality).

²¹ See, e.g., *Virginia Broadcasting Corp.*, 21 FCC Rcd at 3464, para. 7; *KATC Communications, Inc.*, 15 FCC Rcd at 14744, para. 5.

²² *WGME License, LLC*, 25 FCC Rcd 13520, 13524-25 at para. 10 (Med. Bur. 2010).

²³ See, e.g., *Journal Broadcasting Corp.*, 21 FCC Rcd at 3474, para. 8; *Gulf-California Broadcast Company*, 23 FCC Rcd at 7409, nn.23-24.

²⁴ This defect alone is fatal, because, as the Commission has recognized, if any one community is not represented in a system-wide survey, then the waiver request must be made on a community-

(continued . . .)

population data for the Cox Communities or the Cable System, and therefore fails to demonstrate the required proportional representation of the communities within the sample.

The Commission routinely denies significantly viewed waiver petitions that fail to “provide sufficient information to assess whether [individual communities within a multi-community cable system] are proportionally represented in the sample used for the Nielsen tabulation of audience statistics.”²⁵ For example, in *KATC Communications, Inc.*, the Bureau denied a significantly viewed waiver petition for the same reasons the Survey here should be rejected.²⁶ The Bureau’s observed that KATC:

does not show any population estimates for the included communities nor the distribution of sample diaries from those communities. Instead, it provides only the total number of diaries for each system and survey year. The exhibit also fails to provide any information regarding the community associated with each zip code which makes it impossible to determine whether every community of each system is included in the sample. As a result, there is insufficient information to determine whether the sample meets the proportionality requirement specified in the Commission’s rules.²⁷

In *Virginia Broadcasting Corp.*, the Bureau similarly denied a system-wide waiver request because the petitioner:

provided information regarding the total number of diaries from the relevant zip codes in each county and the number of diaries from each zip code in each of the two years, [but] it failed to provide information regarding the population and sample for each community. As a result, [the Bureau could not] determine whether each community [was] properly represented in the sample.²⁸

The MPS Petition suffers from the same defects the Commission identified in cases like *KATC* and *Virginia Broadcasting Corp.* MPS’s failure to present a system-specific Survey that represents the Cox Communities in proportion to their population is fatal to the Petition under the Commission’s rules and precedents; it therefore must be denied.

(. . . continued)

by-community basis for the communities where sufficient data is available. See *Centex Television*, 25 FCC Rcd at 13531-32, paras. 8-9.

²⁵ See *Journal Broadcast Corp.*, 21 FCC Rcd at 3474, para. 8.

²⁶ *KATC*, 15 FCC Rcd at 14744, para. 5.

²⁷ *Id.* (footnote omitted).

²⁸ 21 FCC Rcd at 3464, para. 7.

II. WNBW IS PROHIBITED FROM ENFORCING SYNDICATED EXCLUSIVITY AGAINST WJXT OR WTLV THROUGHOUT THE CABLE SYSTEM.

Apart from the Petition's failure to demonstrate that the Stations are no longer significantly viewed for purposes of both the network non-duplication and syndicated exclusivity rules, the Bureau also should reject the Petition's attempt to enforce syndicated exclusivity against WJXT and WTLV because one or both of the stations' signal contours cover portions of Gainesville, Alachua City, and unincorporated Alachua County.

Section 76.106(a) of the Commission's rules prohibits the enforcement of syndicated exclusivity against a television station in any cable community where (1) the station is significantly viewed in the cable community; or (2) the "cable community unit falls, in whole or in part" within the station's service contour.²⁹ As described above, MPS has failed to show that the Stations no longer are significantly viewed in the Cox Communities, which means that WNBW has no legitimate claim to syndicated exclusivity or network non-duplication in the Cable System. The Petition's request to waive the syndicated exclusivity and network non-duplication rules therefore should be denied for all of the Stations.

Regardless of whether the Stations are significantly viewed, however, WNBW is prohibited from exercising syndicated exclusivity against WJXT(TV) in unincorporated Alachua County and against WTLV(TV) in Gainesville, Alachua City, and unincorporated Alachua County because the stations' signal contours cover portions of those communities.³⁰ Cox's Cable System unquestionably serves Gainesville, Alachua City, and unincorporated Alachua County, and WJXT and WTLV unquestionably place a service contour over portions of those Cox Communities. Therefore, Section 76.106(a) applies and the Petition's request for a waiver of the syndicated exclusivity rules also must be denied to the extent the Stations' signal contours cover portions of the Cox Communities.

²⁹ 47 C.F.R. § 76.106(a).

³⁰ See Exhibit A. Section 76.106(a) of the rules specifies a "grade B contour," but full-power digital television stations do not have a Grade B contour, which is a concept associated with former analog NTSC transmissions. The Commission treats the DTV noise-limited contours as the functional equivalent of the former Grade B contour. See, e.g., *ACME Television, Inc.*, Letter, 26 FCC Rcd 5180 n.18 (Med. Bur. 2011); *Estes Broadcasting, Inc.*, Letter, 25 FCC Rcd 7596 (2010).

CONCLUSION

For the foregoing reasons, the Bureau should deny the Petition in its entirety.

Respectfully submitted,

COXCOM, LLC D/B/A COX
COMMUNICATIONS
GAINESVILLE/OCALA

By: 

Gary S. Lutzker
Jason E. Rademacher

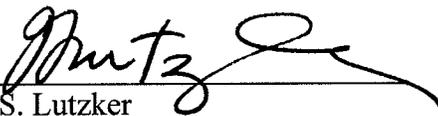
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September 5, 2012

VERIFICATION

To the best of my knowledge, information and belief formed after reasonable inquiry, the foregoing Opposition of CoxCom, LLC d/b/a/ Cox Communications Gainesville/Ocala is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose.



Gary S. Lutzker

September 5, 2012

EXHIBIT A



Google earth

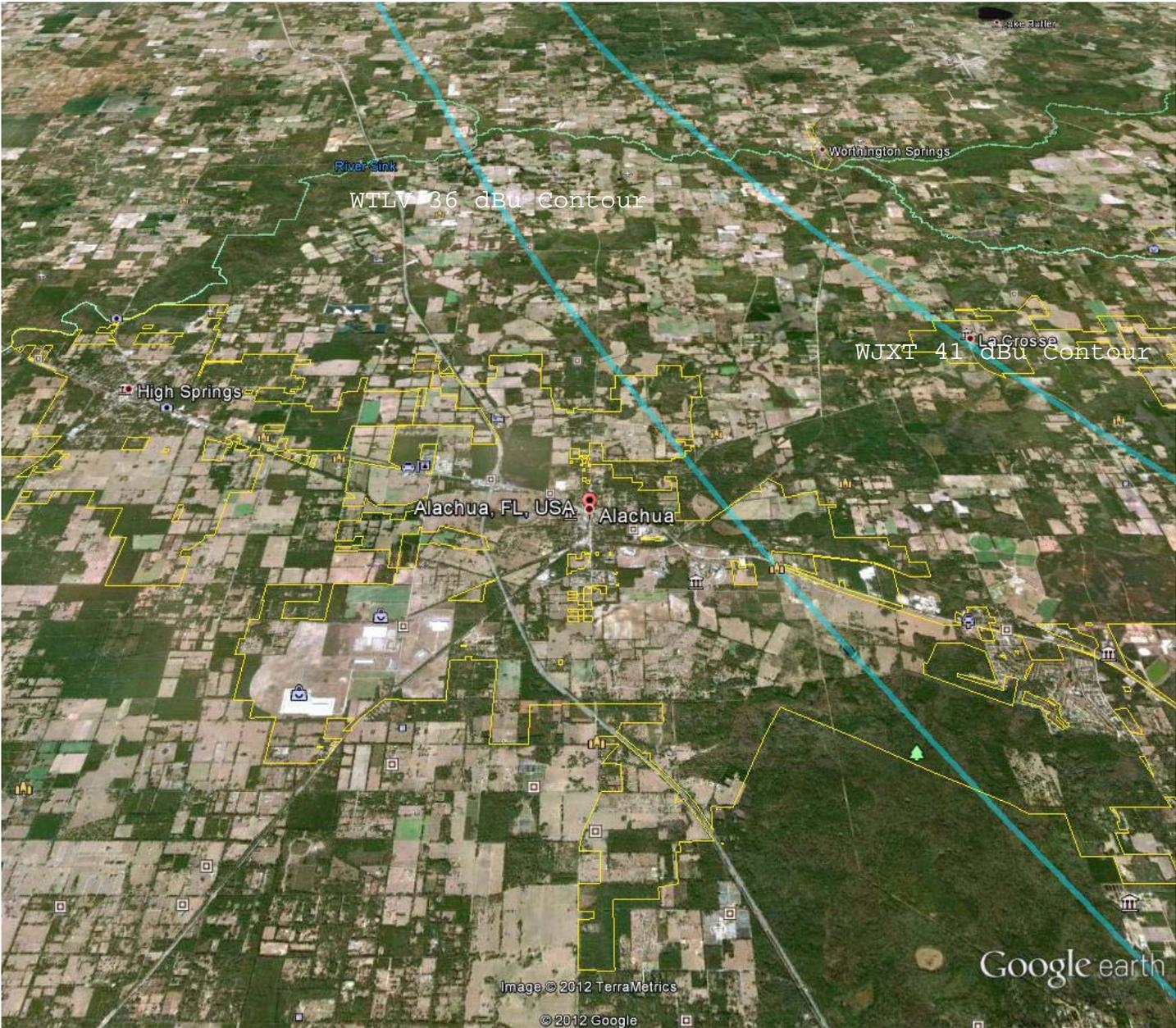
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Google earth





Google earth



CERTIFICATE OF SERVICE

I, Sandra Dallas Jeter, hereby certify that a true and correct copy of the foregoing Opposition of CoxCom, LLC d/b/a/ Cox Communications Gainesville/Ocala was sent by first class U.S. mail, postage prepaid, except where hand-delivery is indicated, on this fifth day of September 2012 to the following:

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Sandra Dallas Jeter

*By Hand

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
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MPS Media of Gainesville Licensee, LLP) MB Docket No. 12-214
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the Commission's Rules)

To: Chief, Media Bureau

DECLARATION OF DALE TAPLEY

1. My name is Dale Tapley, and I am VP, Marketing for CoxCom, LLC d/b/a Cox Communications Gainesville/Ocala (“Cox”), which operates a cable system serving the City of Gainesville, the City of Alachua, the City of Newberry, and unincorporated portions of Alachua County, Florida.
2. I have read the foregoing “Opposition of CoxCom, LLC d/b/a/ Cox Communications Gainesville/Ocala” (the “**Opposition**”) and I am familiar with the contents thereof.
3. The facts contained herein and within the foregoing Opposition are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry. The Opposition is well grounded in fact and 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.
4. I declare under penalty of perjury that the foregoing is true and correct.



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Executed on: August 29, 2012