

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED

JAN 7 2013

Federal Communications Commission
Office of the Secretary

In the Matter of:)
)
Carriage Complaint Against)
)
Blue Ridge Cable Technologies) CSR-8753-M
) MB Docket 12-365
by)
)
Western Pacific Broadcast, LLC)
)
With Respect to Carriage Within the)
Philadelphia, PA Designated Market Area, of)
Local Commercial Television Station WACP,)
Licensed to Atlantic City, New Jersey)

To: Chief, Media Bureau

OPPOSITION TO PETITION FOR SPECIAL RELIEF
BY ORDER OF CARRIAGE

Blue Ridge Cable Technologies (“Blue Ridge”), by its attorneys, and pursuant to Section 76.7 of the Commission’s rules,¹ submits this Opposition to the Petition for Special Relief by Order of Carriage (the “Petition”) of Western Pacific Broadcast, LLC, licensee of television broadcast station WACP, Atlantic City, NJ (the “Station”), regarding carriage on Blue Ridge’s cable systems serving certain communities located in the Philadelphia, PA designated market area (the “Systems”). The Petition is procedurally defective and should be dismissed accordingly.

The service list attached to WACP’s petition evidences that WACP failed to serve a copy of the Petition on the relevant franchising authorities as expressly required by the Commission’s rules. Section 76.7(a)(3) of the Commission’s rules states that

¹ 47 C.F.R. § 76.7.

Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.²

Failure to comply with the service process requirements of Section 76.7(a)(3) of the Commission's rules is grounds for dismissal of a Petition filed under those rules.³ The Commission has stated that service on franchising authorities, in compliance with the rules, is important because "these authorities represent the interests of the community involved" and "carriage or non-carriage may have specific consequences for the local regulatory process."⁴

The certificate of service appended to the Petition shows service only on Blue Ridge's offices in Palmerton, Pennsylvania.⁵ There is no evidence that WACP served the franchise authorities that represent the Blue Ridge communities. Accordingly, the Petition should be dismissed as procedurally defective.

Further, as demonstrated below, WACP fails to provide a signal of good quality to the Systems as required by the Commission's rules.⁶ Therefore, should WACP cure its failure of proper service, the Petition should be denied because the Station is not eligible for must-carry status on the Systems. Under Section 534(h)(1)(B)(iii) of the Communications Act of 1934, as amended (the "Act") and Section 76.55(c)(3) of the Commission's rules, the definition of a "local commercial television station" eligible for must-carry status specifically excludes any

² Id. at 76.7(a)(3) (emphasis added)

³ See *KM Television of El Dorado, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 9889, 9892 (MB 2006).

⁴ *KM Television of El Dorado, LLC*, Order on Reconsideration, 21 FCC Rcd 3906, 3907 (MB 2006).

⁵ See Petition.

⁶ 47 C.F.R. § 76.61(a)

“television broadcast station that does not deliver to the principal headend of a cable system either a signal level of... -61 dBm for digital signals at the input terminals of the signal processing equipment...”⁷ However, stations that do not provide a sufficient signal may still be eligible for must-carry status if they “agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.”⁸

The Blue Ridge communities identified by WACP⁹ are served by principal headends located in Ephrata and Lehighton, Pennsylvania. Following receipt of the Petition, on December, 12, 2012 and on December 13, 2012, respectively, Blue Ridge technicians again measured the signal strength of WACP at the Ephrata and Lehighton headends. As established in the signal measurement reports, attached as Exhibit 1 and Exhibit 2 hereto, and confirming the original signal testing, WACP failed to deliver a signal of good quality to either headend. The highest strength signal delivered to either headend was -72.35 dBm to the headend in Ephrata.¹⁰ The highest strength signal delivered to the Lehighton headend was -75.75 dBm.¹¹ Indeed, as shown, WACP was unable to deliver any picture at all to the Lehighton headend.¹² These tests were conducted using sound engineering measurement practices and met all of the requirements of Section 76.61(a)(2) of the Commission’s rules.¹³ Exhibits 1 and 2 provide all of the

⁷ 47 U.S.C. § 534(h)(1)(B)(iii). *See also* 47 C.F.R. § 76.55(c)(3).

⁸ 47 U.S.C. § 534(h)(1)(B)(iii). *See also* 47 C.F.R. § 76.55(c)(3).

⁹ *See* Petition at 4.

¹⁰ *See* Exhibit 1.

¹¹ *See* Exhibit 2.

¹² *Id.*

¹³ 47 C.F.R. § 76.61(a)(2)

information WACP requested regarding those tests.¹⁴ In sum, WACP does not meet the minimum statutory requirements to be considered a local commercial television station eligible for must-carry status in the Blue Ridge communities.

Under the Act and Section 76.55(c)(3) of the Commission's rules, WACP is allowed to cure its failure to deliver a good quality signal by agreeing, at its own cost and expense, to deliver a good quality signal and to provide the equipment necessary to deliver such a signal. WACP has indicated its agreement to provide a good quality signal.¹⁵ Thus, based on the signal test results, the Commission should only grant the Petition conditioned on WACP's delivery of a good quality signal at its own expense to the Ephrata and Lehighton headends.¹⁶

In conclusion, Blue Ridge respectfully requests that the Petition be dismissed based on WACP's failure to comply with the Commission's basic procedural requirements. Should WACP cure the Petition's procedural defects and perfect service on the necessary parties, Blue Ridge submits that the Petition be granted only if the relief requested is expressly subject to WACP's delivery of a good quality signal to the Ephrata and Lehighton headends, at WACP's expense.

¹⁴ Petition at 5-6

¹⁵ *Id.* at 7

¹⁶ *See ITV of Buffalo, LLC v. Time Warner Cable Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 9356, 9359 (MB 2012) (mandating carriage of a local television station upon delivery of a good quality signal).

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,



John R. Wilner

Ari Z. Moskowitz

EDWARDS WILDMAN PALMER LLP

1255 23rd Street, NW

Eighth Floor

Washington, DC 20037

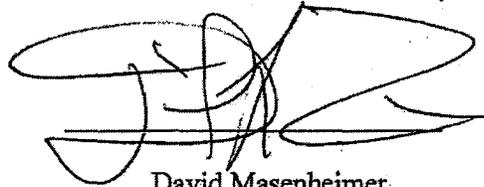
*Counsel for Blue Ridge Cable
Technologies*

Date: January 7, 2012

DECLARATION

I, David Masenheimer, do hereby state under penalty of perjury as follows:

1. I am the President of Blue Ridge Cable Technologies, operator of a cable television system serving communities located in Berks, Lehigh, and Northampton Counties.
2. I have reviewed the foregoing "Opposition to Petition for Special Relief by Order of Carriage" and to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and warranted by existing law.



David Masenheimer

Date: December 28, 2012

EXHIBIT 1

SIGNAL SURVEY

SYSTEM: BRC Ephrata HEAD END LOCATION: 66 Black Diamond Rd Ephrata PA 17522
HEAD END COORDINATES: 40°-10-25.7 N / 76.°-09-44.0 W

TESTING DATE: 12/13/2012

WEATHER CONDITIONS: 46 Degrees Clear/Sunny

TV STATION: WACP OFF AIR CHANNEL NUMBER: 4.1

TRANSMITTER ELEVATION: 256 Meters ANALOG/DIGITAL: DIGITAL

TRANSMITTER POWER: Digital Full-Power - 10 kW TRANSMITTER COORDINATES: 39°-44-05 N /74-50-29 W

DISTANCE OF TRANSMITTER FROM HEAD END RECEPTION SIGHT: 76.2 Miles

TEST EQUIPMENT USED:

ANTENNA MAKE & MODEL: Lindsay 10LE2-13/FM-U Series

SIGNAL MEASURING DEVICE, CAL. DATE: Trilithic 860 DSP Cable Analyzer Cal. Date 09/12/2012

8VSB RECEIVER, MAKE, MODEL: SCOPUS IRP-3900 Intregrated Receiver Processor

OTHER (PREAMS, SPLITTER, ETC.) 250 ft-650 MC2, 650 to F connector,15 feet RG6 cable, Antenna Placed at top of
250 ft tower. Total cable Length=265 ft

TESTING METHOD USED: Antenna Test Lead, Directly connected to Trilithic 860 DSP Cable Analyzer

Antenna Test Lead, Directly connected to SCOPUS IRP-3900 8VSB Receiver

SIGNAL LEVEL MEASUREMENTS:

	<u>MEASURED</u>	<u>COMPUTED</u>	<u>TIME</u>
TEST 1 - SIGNAL LEVEL:	<u>(-23.6 dBmv)</u>	<u>(-72.35 dBm)</u>	<u>11:50 AM</u>
TEST 2 - SIGNAL LEVEL:	<u>(-24.3 dBmv)</u>	<u>(-73.05 dBm)</u>	<u>12:45 PM</u>
TEST 3 - SIGNAL LEVEL:	<u>(-25.2 dBmv)</u>	<u>(-73.95 dBm)</u>	<u>1:10 PM</u>
TEST 4 - SIGNAL LEVEL:	<u>(-24.5 dBmv)</u>	<u>(-73.25 dBm)</u>	<u>1:35 PM</u>
TEST 5 - SIGNAL LEVEL:	<u>(-25.1 dBmv)</u>	<u>(-73.85 dBm)</u>	<u>2:00 PM</u>
TEST 6 - SIGNAL LEVEL:	<u>(-25.3 dBmv)</u>	<u>(-74.05 dBm)</u>	<u>2:20 PM</u>

VISUAL OBSERVATIONS

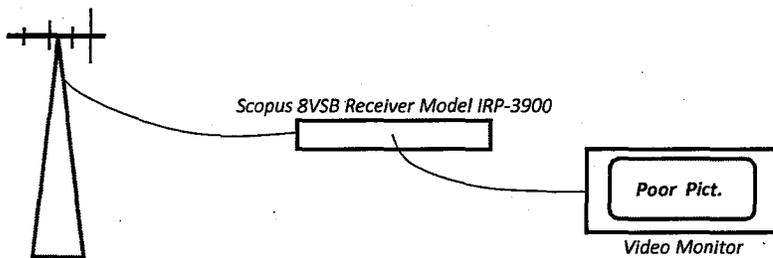
TEST 1 - QUALITY DESCRIPTION: Video was present, Quality was unstable video break ups a couple times a minute
TEST 2 - QUALITY DESCRIPTION: Video was present, Quality was unstable video break ups a couple times a minute
TEST 3 - QUALITY DESCRIPTION: Video was present, Quality was unstable video break ups a couple times a minute
TEST 4 - QUALITY DESCRIPTION: Video was present, Quality was unstable video break ups a couple times a minute
TEST 5 - QUALITY DESCRIPTION: Video was present, Quality was unstable video break ups a couple times a minute
TEST 6 - QUALITY DESCRIPTION: Video was present, Quality was unstable video break ups a couple times a minute

ADDITONAL COMMENTS: Antenna was peaked to the highest signal level

REPORT PREPARED BY: James Vaccaro TITLE: Ephrata Head End technician
REPORT PREPARED BY: Ed Martino TITLE: ACTO, Blue Ridge Communications
PHONE NUMBER: 610 826 9564

PICTURE QUALITY TEST

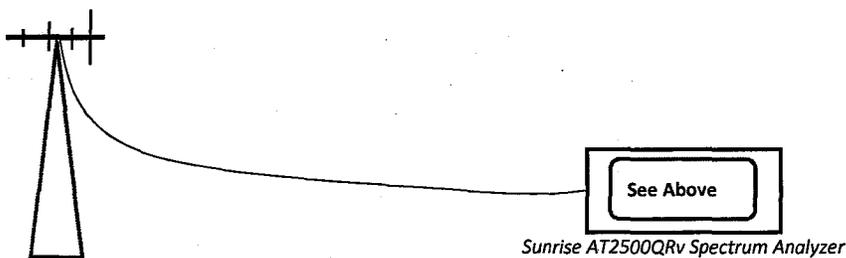
Lindsay 10LE2-13/FM-U Series
Located At 250 feet On Ephrata Tower
Bearing 113 degrees
Distance To Transmitter 76.2 Miles



> Tower Down Lead From Antenna Is 650 MC2 Cable And Is 250 Feet Long, then connected to 15 ft of RG #6 cable then connected To Scopus Receiver With Video Output Of Scopus Receiver then connected to a Video Monitor.

SIGNAL LEVEL TEST

Lindsay 10LE2-13/FM-U Series
Located At 250 feet On Ephrata Tower
Bearing 113 degrees
Distance To Transmitter 76.2 Miles



> Tower Down Lead From Antenna Is 650 MC2 Cable And Is 250 Feet Long, then connected to 15 ft of RG #6 cable then connected To Sunrise Spectrum Analyzer.

EXHIBIT 2

SIGNAL SURVEY

SYSTEM: BRC Lehighton

HEAD END LOCATION: 936 Elm Street, Lehighton Pa. 18235

HEAD END COORDINATES: 40-49-43 N/75-39-05 W

TESTING DATE: 12/12/2012

WEATHER CONDITIONS: Sunny, clear, 36 degrees

TV STATION: WACP-4 OFF AIR CHANNEL NUMBER: 4

TRANSMITTER ELEVATION: 256 meters ANALOG/DIGITAL: digital

TRANSMITTER POWER: Digital Full-Power - 10 kW TRANSMITTER COORDINATES: 39-44-05 N/74-50-29 W

DISTANCE OF TRANSMITTER FROM HEAD END RECEPTION SIGHT: 86.83 miles

TEST EQUIPMENT USED:

ANTENNA MAKE & MODEL: Test antenna (manufacture unknown) directed towards WACP

SIGNAL MEASURING DEVICE, CAL. DATE: Sunrise Telecom AT2500QRv Spectrum Analyzer, Calibrated 6/26/12

8VSB RECEIVER, MAKE, MODEL: Scopus IRP-3900 8 VSB Off Air Receiver

OTHER (PREAMPS, SPLITTER, ETC.) No Pre Amp Used

TESTING METHOD USED:

Signal Wire From Antenna Hooked Directly To Analyzer For Level Reading

Signal Wire From Antenna Hooked Directly To Scopus Receiver And Then To Video Monitor To View Picture Quality

SIGNAL LEVEL MEASUREMENTS:

	<u>MEASURED</u>	<u>COMPUTED</u>	<u>TIME</u>
TEST 1 - SIGNAL LEVEL:	-27 dBmv	-75.75 dBm	9:29 AM
TEST 2 - SIGNAL LEVEL:	-27 dBmv	-75.75 dBm	9:45 AM
TEST 3 - SIGNAL LEVEL:	-27 dBmv	-75.75 dBm	10:10 AM
TEST 4 - SIGNAL LEVEL:	-27 dBmv	-75.75 dBm	10:45 AM
TEST 5 - SIGNAL LEVEL:	-27 dBmv	-75.75 dBm	11:05 AM
TEST 6 - SIGNAL LEVEL:	-27 dBmv	-75.75 dBm	11:30 PM

VISUAL OBSERVATIONS

TEST 1 - QUALITY DESCRIPTION	<u>Receiver Would Not Lock, No Picture</u>
TEST 2 - QUALITY DESCRIPTION	<u>Receiver Would Not Lock, No Picture</u>
TEST 3 - QUALITY DESCRIPTION	<u>Receiver Would Not Lock, No Picture</u>
TEST 4 - QUALITY DESCRIPTION	<u>Receiver Would Not Lock, No Picture</u>
TEST 5 - QUALITY DESCRIPTION	<u>Receiver Would Not Lock, No Picture</u>
TEST 6 - QUALITY DESCRIPTION	<u>Receiver Would Not Lock, No Picture</u>

ADDITIONAL COMMENTS:

> Test Was Done Using Our Channel 6 Antenna With No Pre Amp Hooked To 130 Feet Of RG #6 Cable. The Scopus Receiver Showed A SNR Of 14 And Would Not Lock On The Signal With The Result Of No Picture Visible. The Channel 6 Antenna Is Located At 110 Feet On The Lehighton Tower. As Stated Above The Make And Model Number Of The Antenna Is Not Known.

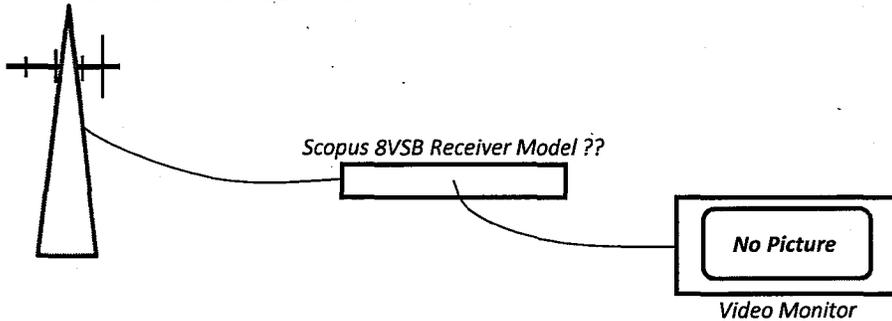
REPORT PREPARED BY: Ed Martino

TITLE: ACTO, Blue Ridge Communications

PHONE NUMBER: 610-826-9540

PICTURE QUALITY TEST

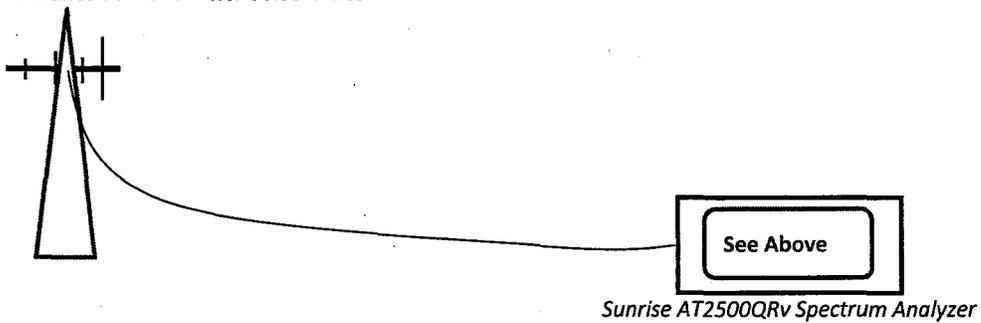
*Unknown Make And Model Number Antenna
Located At 110 feet On Leighton Tower
Bearing 165 degrees
Distance To Transmitter 86.83 Miles*



> Tower Down Lead From Antenna Is RG #6 Cable And Is 130 Feet Long Connected To Scopus Receiver With Video Output Of Scopus Receiver Hooked To Video Monitor.

SIGNAL LEVEL TEST

*Unknown Make And Model Number Antenna
Located At 110 feet On Leighton Tower
Bearing 165 Degrees
Distance To Transmitter 86.83 Miles*



> Tower Down Lead From Antenna Is RG #6 Cable And Is 130 Feet Long Connected To Sunrise AT2500QRv Spectrum Analyzer.

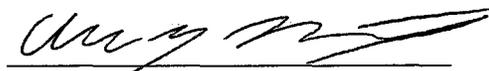
CERTIFICATE OF SERVICE

I, Ari Z. Moskowitz, hereby certify that I have served on this 7th day of January, 2013, a copy of the foregoing **OPPOSITION TO PETITION FOR SPECIAL RELIEF BY ORDER OF CARRIAGE** on the following parties by first-class mail, postage pre-paid:

M. Scott Johnson, Esq.
Thomas J. Dougherty, Jr., Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th St., 11th Floor
Arlington, VA 22209

Mr. Steven Broeckaert
Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054

Mr. Simon Banyai
Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20054


Ari Z. Moskowitz