

ACCEPTED/FILED

MAR 5 2013

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Western Pacific Broadcast, LLC) CSR-8757-M, Docket No. 13-14
)
Must Carry Complaint)
With Respect to Carriage)
Within the Philadelphia, PA DMA)
Of Television Broadcast Station WACP)
Atlantic City New Jersey)

~~RECEIVED - FCC~~ *st.*
~~FEB 11 2013~~
~~Federal Communications Commission~~
~~Bureau / Office~~

To: Chief, Media Bureau

OPPOSITION TO CLARIFICATION, SUPPLEMENT AND CORRECTION OF
RECORD
MOTION TO DISMISS UNAUTHORIZED PLEADING

Service Electric Cable TV Inc. (psid #001711) ("Cable TV), by counsel, hereby opposes the attempt by Western Pacific Broadcast, LLC ("Western Pacific") to force carriage of television broadcast station WACP (Channel 4, Atlantic City, N.J.) on its cable television system located in the Philadelphia, Pennsylvania DMA.¹

Facts

On June 6, 2012, Western Pacific served Cable TV with a must carry election notice at the address listed for Cable TV in the FCC records.² On September 14, 2012 Western Pacific served its demand letter³ again at Cable TV's official address. Western Pacific received a letter from Cable TV dated the 1st of October 2012 which advised Western Pacific that Cable TV would not carry WACP because it was too far from Cable TV's principal headend (located at Bethlehem, Pa. at 40 35 55/ 75 25 12) and because the station did not deliver a qualified signal ("October 1 Letter"). The October 1 letter was signed by Joseph G. Macus, Vice President of Service Electric Cable TV & Communications. On December 14, 2012, Western Pacific filed its Petition against Cablevision which did not include Cable TV as defendant in the must carry

¹ Western Pacific filed a Petition for Special Relief by Order of Carriage ("Petition") against Service Electric Cablevision, Inc (psid # 001704) ("Cablevision") on December 14, 2012. Cable TV and Cablevision are wholly separate entities with no common ownership or control. On January 9, 2013, Western Pacific filed its Clarification, Supplement and Correction of Record to December 14, 2012 Petition for Special Relief by Order of Carriage ("Supplement") which sought to add Cable TV to its Petition.

² Petition at pg 2 and Exhibit 4.

³ Petition at pg 2 and Exhibit 3.

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complaint. The Petition was not served on Cable TV at that time. The Supplement, which seeks to add Cable TV to the Petition was filed on January 9, 2013 and was served on Cable TV. On January 3, 2013, without providing any opportunity for Cable TV to respond to the Supplement, the Media Bureau granted the Supplement and added Cable TV as a defendant.

The Petition Should Not be Accepted

Western Pacific's Petition as it relates to Cable TV should not have been accepted and pursuant to Section 76.61(a)(5)(i) should be dismissed.

WACP's must carry election was received at Cable TV's offices on June 11, 2012⁴ and the must carry demand letter was received at Cable TV's offices on September 20, 2012.⁵ On October 1, 2012 Cable TV rejected WACP's must carry demand⁶. As required by Section 76.61(a)(2) of the rules, The October 1 letter stated that "given the distance between the station's transmitter and our headend, it is highly unlikely that WACP will be able to deliver a qualified signal." Also as required by 76.61(a)(2), the October 1 letter provided the coordinates of the system's headend⁷. In addition, Cable TV advised WACP that on two occasions it attempted to receive the broadcast signal of channel 4 at its principal headend and were not able to receive a signal either time⁸.

Section 76.61(a)(5) prohibits the Commission from accepting a must carry complaint from Western Pacific against Cable TV unless that complaint was filed 60 days or less from Cable TV's rejection of Western Pacific's must carry demand. Cable TV was not added as a defendant to Western Pacific's must carry complaint until January 31, 2013. For Western Pacific's must carry complaint to be accepted under the Commission's rules it should have been filed against Cable TV no later than 60 days after the October 1, rejection letter. Cable TV was not added as a defendant until January 31, 2013 and Western Pacific's Petition was not served on Cable TV until February 7, 2013.

The timing, therefore, is thus:

- Cable TV rejection letter - October 1, 2012.
- Complaint against Cablevision (a different company than Cable TV)- December 14, 2012 (74 days after the rejection),
- Cable TV added as defendant – January 31, 2013 (122 days after the rejection and 133 days after Western Pacific's must carry demand letter was received on September 20, 2012).
- Cable TV served with Petition –February 7, 2013 (129 days after the rejection and 140 days after the must carry demand letter was received.

⁴ *Petition* at Exhibit 3.

⁵ *Petition* at Exhibit 4.

⁶ Attached at Exhibit 1.

⁷ A refusal based on distance from the principal headend does not require information on the signal measurement. 76.61(a)(1) provides in pertinent part: "If a refusal is based on the station's distance from the cable system's principal headend, the cable operator's response shall include the location of such headend."

⁸ Signal tests were conducted on July 18 2012, and on September 25, 2012. On February 5, 2013, Cable TV's engineer met with the engineer from Western Pacific and again tried to measure the signal of WACP. No discernable signal was found. See Engineering Report attached at Exhibit 2.

There can be no doubt that the October 1 letter was a rejection. It clearly provided that the headend, at 72 miles, was so far from the station's transmitter that it was highly unlikely that a qualified signal could be delivered.⁹ Unlike *Complaint Against Cablevision Systems*¹⁰ the October 1 letter was a clear refusal and was not an encouragement to provide information whereby the station's signal could be delivered in good quality condition. To the contrary, the explicit language of the October 1 letter was the statement that "it is highly unlikely that WACP will be able to deliver a qualified signal". No effort was made to contact Cable TV about the signal strength at its Headend or alternative means of obtaining a good quality signal until the 5th of February. Even after it was made clear on the 19th of December¹¹ that Cable TV and Cablevision were two different companies serving two different cable systems, Western Pacific made no effort to ascertain or resolve the signal quality issue.¹²

Even if the Commission should determine that the October 1 letter was not a rejection, the complaint against Cable TV was still untimely. Section 76.61(a)(5)(ii) requires that if a cable operator has not rejected the demand letter within 30 days then the broadcaster must file the must carry complaint within 60 days thereafter. The demand letter was received on September 20, 2012. Cable TV had until October 20, 2012 to file its rejection. If no rejection was received by September 20, 2012 then Western Pacific was required to file its must carry complaint no later than December 19, 2012. Clearly, neither the Supplement which sought to add Cable TV as a defendant (filed January 9, 2013), the Media Bureau's grant of the Supplement, nor the date Cable TV was finally served with the must carry complaint occurred prior to the 19th of December.

Whether either 76.61(a)(5)(i) or (ii) was applicable, Western Pacific's must carry complaint against Cable TV was untimely and therefore must be dismissed.

Grant of the Supplement was Improper

The Mass Media Bureau's grant of the Supplement was founded on a mistake of fact, a violation of due process and is contrary to the Commission's rules.

⁹ *Friendly Bible Church*, supra; See also *Community Television Complaint Against Inter Media* 14 FCC Rcd 2063 (1999) at para 9 which found that Inter Media's two letters were rejections: "While neither of those letters contained any specific language stating that carriage of WATC(TV) was denied, both of those letters made it unequivocally clear, pursuant to tests it had completed, that WATC(TV) failed to provide an adequate signal to InterMedia's cable systems' headends. Such notice of signal inadequacy placed CTI on notice that WATC(TV) would not be carried, because of the inadequacy of WATC(TV)'s signal at InterMedia's cable system headends shown by the test results contained in those letters, unless something further were done."; *KM Television of Flagstaff, L.L.C. v. Cable One, Inc.* 18 FCC Rcd 153 (2003) at para. 4 where the response to the television station stated that the signal was "undetectable."

¹⁰ *Complaint Against Cablevision Systems* 11 FCC Rcd 2362 (1966).

¹¹ Supplement at Exhibit 2.

¹² A broadcast station's engineers have an affirmative duty to promptly meet with the cable operator's engineers to resolve any signal quality issues. See *Clarification Order in MM Docket 92-259*, 8 FCC Rcd 4141 (1993)(*"Clarification"*) at paragraph 9. The station's failure to take any affirmative action to dispute or resolve the signal quality issue violates this clear obligation.

The Media Bureau's grant of the Supplement was based on the supposition "particularly that the requested defendant has been served without objection, responded to the carriage demand¹³, and has not opposed its addition as a party..." Cable TV does, in fact oppose its addition as a party.¹⁴ Moreover, the Bureau's failure to provide adequate time for Cable TV to oppose the Supplement violates Cable TV's due process rights to respond to the allegations made in the Supplement.¹⁵

Western Pacific's Petition was filed pursuant to Sections 76.61(a)(1), and 76.61(a)(3) of the Commission's rules. Section 76.61(a)(3) requires that the complaint be filed "in accordance with the procedures set forth in § 76.7 of this part."¹⁶ Section 76.7(d) provides that "Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted."¹⁷ Section 76.7(e) provides the circumstances under Section 76.7 where additional motions or pleadings can be provided, and each of those contemplates the Commission requesting additional pleadings or information. There is no evidence that the Commission or the Bureau requested the filing of the Supplement. Moreover, no showing of extraordinary circumstances has been made.

Western Pacific has made no showing of extraordinary circumstances for why the Supplement is necessary. It merely states that it was confused concerning the corporate ownership of the cable system operating as part of psid # 001711. Western Pacific asserts that because of this confusion it only filed the Petition against Cablevision, the operator of the systems under psid # 001704, and failed to include Cable TV in its Petition. It also failed to serve Cable TV with a copy of the Petition.¹⁸

There is no legitimate basis to explain why Cable TV was neither originally included in the Petition, nor served with the Petition. Western Pacific admits it was able to serve Cable TV with the June 6, 2012 election notice¹⁹, and the September 14, 2012 demand letter²⁰ at its correct address. Western Pacific admits that it received a letter from Cable TV dated the 1st of October 2012 which advised Western Pacific that Cable TV would not carry WACP because it was too far from Cable TV's principal headend (located at Bethlehem, Pa. at 40 35 55/ 75 25 12) and because the station did not deliver a qualified signal ("October 1 Letter"). The October 1 letter was signed by Joseph G. Macus, Vice President of Service Electric Cable TV & Communications. However despite all this, Western Pacific claims that it was unable to serve Cable TV with its Petition at either the address where Western Pacific delivered its election and demand letters or the address on the October 1 Letter. It is clear that Western Pacific had the

¹³ As stated more particularly below, it is Cable TV's response to the carriage demand that destroys any validity to Western Pacific's "need" for a clarification.

¹⁴ See Palchick email to Simon Banyai dated February 4, 2013 which requests that the January 31, 2013, letter be rescinded, Attached hereto as Exhibit 3.

¹⁵ *Ashbacker Radio Corp. v. Federal Communications Commission*, 326 U.S. 327, 90 L. Ed. 108, 66 S. Ct. 148 (1945); *In Re AT&T*, 2 FCC 2d 142 (1965).

¹⁶ 47 USC 76.61(a)(3).

¹⁷ 47 USC 76.7 (d).

¹⁸ Western Pacific does not state where it obtained the list of CUIDs which were contained at Exhibit 1 of the Petition which has the incorrect corporate name listed for Cable TV's systems. However, the FCC's official COALs list has both the correct corporate name and address for Cable TV's systems. A copy of the official FCC record is attached hereto at Exhibit 4. It should be noted that even the list attached to the Petition has the correct address of both companies.

¹⁹ Supplement at pg 2.

²⁰ Petition at pg 2 and Exhibit 2.

correct address. Western Pacific's failure to use the correct address does not rise to the level of "extraordinary circumstances" required by Section 76.7 (d) of the rules to permit supplemental pleadings.

Equally puzzling is why Western Pacific failed to use the FCC's official records to ascertain the correct entity operating psid # 001711. Western Pacific was able to deduce the correct address from those records, why could they not deduce the correct party. Such careless disregard for proper due diligence does not justify the extraordinary relief requested by the Supplement²¹.

Where the information addressed in a pleading not contemplated by Section 76.7 of the rules could have been addressed in the normal pleadings, the Commission has held that "extraordinary circumstances" required by Section 76.7(d) have not been met²². Proper due diligence by Western Pacific would have eliminated the need for the Supplement. Most importantly, the Commission should not allow the grant of the Supplement as mechanism to circumvent the explicit filing requirements contained at Section 76.61(a)(5)(i) and (ii) of the Commission's rules²³.

Western Pacific's Failure to Ascertain the Correct Cable Company is not a valid basis for Violation of Section 76.61(a)(5)(i)and (ii) of the Rules.

The right to demand carriage of a broadcast station on a cable television system is a valuable right that the broadcaster should have an interest in prosecuting with appropriate due diligence. Cable operators have a right to know when they must carry a station in a timely manner. Even more so, the public has a right to know what broadcast signals they will be receiving²⁴. The rules are clear. When a broadcaster sits on its hands or fails to exercise due diligence in its pursuit of carriage, that broadcaster will not be permitted to file a must carry complaint. It is for these very reasons that the time limits in 76.61 of the rules were adopted, and those time limits should be enforced.

There is no rational reason why Western Pacific could not have filed a timely complaint against Cable TV. Section 76.1801(a)(1) of the Commission's rules requires that prior to operating the cable operator must file with the Commission: "The legal name of the operator, entity identification or social security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied."²⁵ Cable Operators are required to update this information when it changes.²⁶ Based on this information, the FCC places all pertinent information about the cable operator in the Cable Operations and Licensing System ("COALS"). This information is easily accessible and available to anyone. Information about cable companies can be determined any number of ways, including doing a

²¹ Clarification at para. 9.

²² See *Dan Reynolds v. TCA Partners* 18 FCC Rcd 26693 (2003). See also, *Family Stations v. EchoStar* 17 FCC Rcd 982 (2002); *Petition of the City of Boston* 27 FCC Rcd 3763 (2012); and *Bloomberg v. Comcast Communications* 27FCC Rcd 4891 (2012).

²³ *Friendly Bible Church* 11 FCC Rcd 17115 (1996) at para. 8.

²⁴ Id.

²⁵ 47 C.F.R. § 76.1801.

²⁶ 47 C.F.R. § 76.1610

search by community. Once a cable operator is identified, the COALS system provides the legal name, address, and systems locations. Western Pacific had only to use the COALS system to accurately determine the legal name and official address for Cable TV. Their failure to do so can not be used an excuse to subvert the time limits in 76.61.

Western Pacific must carry election and must carry demand were both sent to the legal address for Cable TV. However, Western Pacific, for some unknown reason, elected to file its Petition only against Cablevision and served it only on Cablevision. Nowhere in its Supplement does Western Pacific even attempt to explain why it failed to serve Cable TV as it had before. Accordingly, Western Pacific should not be permitted to use its “confusion” as a basis to justify its non-compliance with the time limits imposed by 76.61(a)(5).

WACP is not Entitled to Carriage on Cable TV’s systems

A. A Qualified Signal is not available: Pursuant to Section 76.55(c), WACP is not a qualified commercial television station because it does not deliver to Cable TV’s principal headend a signal level of -61dBm at the inputs of Cable TV’s signal processing equipment.

Signal tests were conducted on July 18 2012, September 25, 2012, and on February 5, 2013. At no time was there any discernible signal detected.²⁷ Moreover, the February 5 2013 test was witnessed by WACP Chief Engineer Greg Kraft who concurred that there was no discernible signal. Accordingly, both the Petition and Supplement should be denied with prejudice.

B. WACP’s Programming is duplicated by a station already carried on the system: Section 76.56(b)(5) of the rules provides in pertinent part: “ A cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station that is carried on its system...”

Cable TV currently carries on its system television broadcast station WTVE (Channel 51 Reading). The vast majority of programming carried on WTVE is paid programming or commercial length programming.

Cable TV has been unable to obtain any definitive information on the programming carried by WACP.²⁸ As best as Cable TV is able to ascertain, the primary programming on WACP is paid or commercial length programming. Therefore, based on the only information that WACP has made available, it would appear that both WTVE and WACP carry paid programming and commercial length programming. Thus it would appear that WACP substantially duplicates the programming of WTVE, and therefore, WACP need not be carried pursuant to 76.56 (b) (5).

Waiver of Time Restrictions are Contrary to Public Policy

The only way that Western Pacific’s Petition against Cable TV could be accepted is if the Commission waives the time restrictions set by 76.61(a)(5). Western Pacific’s failure to timely

²⁷ See Exhibit 2.

²⁸ Note that simultaneous with this Opposition, Cable TV is filing a market modification to have Cable TV excluded from WACP’s DMA.

file pursuant to either 76.61(a)(5)(i) or 76.61(a)(5)(ii) should be sufficient to bar Western Pacific's Petition²⁹.

The public interest reasons for the strict time limits were substantial when the must carry rules were adopted. Today, however, there are even greater reasons under the Commission's *National Broadband Plan*³⁰. The Commission has identified the roll out of high speed broadband through out America as a priority. Cable TV is a rural cable television system operator. For many of its subscribers a high speed internet service is their portal to the world. Because of capacity limits on its cable system the best broadband service that Cable TV has been able to offer its customers is 25 megabits per second. It presently has plans to modify its plant to be DOCSIS 3 capable which will permit speeds up to 50 megabits per second. If Cable TV has to remove 6 MHz of analog channel space to provide carriage of WACP it will not have sufficient capacity switch to DOCSIS 3 and will not have the capability of offering its customers internet speeds of up to 50 megabits per second. The reallocation of 6 MHz of bandwidth will also have a serious negative impact on its ability to maintain its current broadband capacity.

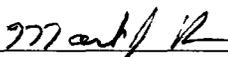
Conclusion

It would be a gross violation of public policy and the FCC rules to force Cable TV to add WACP. WACP provides no local programming, provides no local signal, substantially duplicates the programming of another broadcast station already carried on the system, and failed to timely file a must carry complaint.

Accordingly, for the reasons stated above, it is respectfully requested that Western Pacific's Petition for Special Relief By Order of Carriage be dismissed and its Clarification, Supplement and Correction of Record be denied.

Respectfully submitted,

SERVICE ELECTRIC CABLE TELEVISION, INC.



Mark Palchick
Peter Gutmann
Its Counsel

Womble Carlyle Sandridge & Rice, PLLC
1200 19th Street, Fifth Floor
Washington, D.C. 20036
202/857-4400

February 11, 2013

²⁹ *Must Carry Order* 8 FCC Rcd 2965 (1993); *Friendly Bible Church*, supra.

³⁰ <http://www.broadband.gov/download-plan>.

CERTIFICATE OF SERVICE

Peter Gutmann, an attorney with the law firm of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a true and correct copy of the foregoing "Petition for Special Relief" was served by U.S. mail, first class, postage-prepaid on the 11th day of February, 2013, on the following:

M. Scott Johnson, Esq.
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(Counsel for Western Pacific Broadcast, LLC)

A handwritten signature in black ink, appearing to read "Peter Gutmann", with a long horizontal flourish extending to the right.

EXHIBIT 1



2260 Avenue A • LVIP #1 • Bethlehem, PA 18017-2170
Phone 610-865-9100 • Fax 610-865-5031

October 1, 2012

Via Certified Mail, Return Receipt Requested

M. Scott Johnson
Fletcher Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

Thomas J. Dougherty, Jr.
Fletcher Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209

RE: Carriage Request of WACP (Ch 4, Atlantic City, New Jersey)

Dear Counsel:

We are in receipt of your letter dated the 14th of September 2012 which demands carriage of television broadcast station WACP (Ch 4, Atlantic City, New Jersey) on our Allentown, Pennsylvania cable television system. The original letter dated the 6th of June 2012, by its explicit terms, was not a demand for carriage, but rather a notice of intent to begin operations. Please be advised, therefore, that your letter of the 14th of September 2012 is the first demand for carriage that we received.

Our principal headend for the system, as defined at Section 76.5(pp) of the FCC's rules and regulations, is located at Bethlehem Pennsylvania at 40 35' 55" – 75 25' 12". According to our calculations the transmitter for WACP is over 72 miles from the system's principal headend.

On the 18th of July 2012 and then again on the 25th of September, our engineers attempted to receive the broadcast signal of channel 4 at our principal headend. They were not able either time to receive a signal from channel 4. If you wish, we would be happy to discuss your payment of the cost to deliver a signal consistent with Section 76.55(c) (3), however, given the distance between the station's transmitter and our headend, it is highly unlikely that WACP will be able to deliver a qualified signal.

We look forward to hearing from Matthew Bray or the station's engineers.

Sincerely,

A handwritten signature in black ink that reads 'Joseph G. Macus'. The signature is written in a cursive style with a large initial 'J'.

Joseph G. Macus
Vice President

cc Matthew J. Bray

EXHIBIT 2

Service Electric Cable TV Inc .

Signal Test for WACP TV 4.1

Tower location: 1829 Savercool Ave, Bethlehem, PA 18015

Lat: 40.35'55" . 075.25'12" AMSL 830 ft

DATE: February 5 2013 11:00 am

Conducted by Jeff Kelly, Director of Engineering and Eric Koon, Senior Engineer

Witnessed By: WACP Chief Engineer Greg Kraft

Test Equipment Blonder Tongue BRY-LP-LB Low band Antenna at 50 feet above ground level on test tower.

Sunrise Telcom AT2500 RQV Spectrum Analyzer S/N US83706-0609 Last date of Calibration July 2012

Sharp 19" digital TV S/N 805994183 Purchased December 2012

KTech DVM-150 E S/N DVMARDND 0611-05 Purchased November 2006

We first set the Low band antenna to 153' True and 165' degrees Magnetic toward the WACP tower.

We hooked up the antenna cable to Spectrum analyzer, set the center Freq to 69.0 Mhz. No signal was detected, but we did detect channel 6.

Secondly, we hooked up the low band antenna to the Sharp 19" TV . We then did a channel scan for Air-TV Digital. It decoded 6.1.6.2. 17.1.173 and 9.1. We stopped the scan. We then manually put in 4.1 into the tuner, still no channel 4.

Lastly, we hooked up the Low Band antenna to the K-Tech 150 Receiver. We selected RF channel 4. It said we had an input of -73.4 dbmv on the input but no carrier lock. We then put in channel 6 and got a carrier lock and input signal Of -19.8 dbmv.

After the test Mr. Kraft was satisfied that we could not pick up WACP as stated in our previous test in October of 2012.

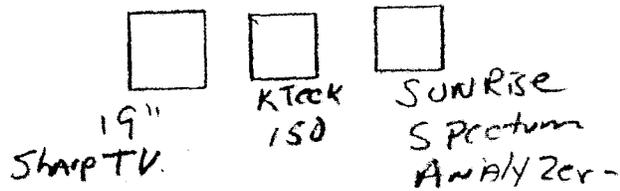
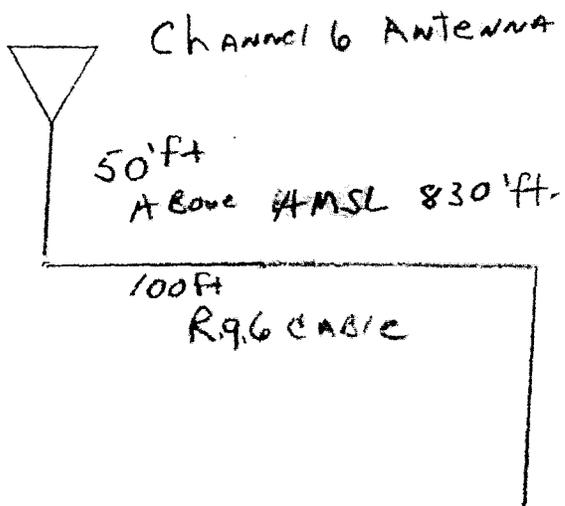


EXHIBIT 3

Murphy, Maureen

From: Palchick, Mark
Sent: Monday, February 04, 2013 6:16 PM
To: Simon.Banyai@fcc.gov
Cc: Steven Broeckaert; claudia.tillery@fcc.gov; M. Scott Johnson (sjohnson@fhhlaw.com); Thomas J. Dougherty Jr. (dougherty@fhhlaw.com); Joe Macus; Jack Capparell
Subject: FW: Western Pacific Broad. v. Service Electric - Grant of Motion to Clarify
Attachments: CSR-8757-M Docket No 13-14 Letter Granting Motion to Clarify, Supplement and Correct Record.docx.pdf

Importance: High

Mr. Banyai

We are counsel for Service Electric Cable TV, Inc (PSID# 01711) ("Cable TV"). Gary Lutzker, counsel for Service Electric Cablevision, ("Cablevision") was kind enough to forward your letter of 31 January 2013 to us. We believe that your letter to Western Pacific Broadcasting ("Western Pacific") was sent in error, in violation of the FCC's rules, and relies on gross misstatements of the facts. We ask that your letter be rescinded.

Service Electric Cable TV, Inc is not an affiliate of Service Electric Cablevision. The two companies are two separately owned and operated companies. If counsel for Western Pacific had merely checked the Commission's Cable Operations and Licensing System ("COALS") they would have been aware that these are not affiliates, but rather two different companies. Moreover, they did, in fact, know that these were two separate wholly owned and operated companies because they were so advised on the 19th of December 2012, by counsel for Cablevision (*See Clarification, Supplement and Correction of Record* ("Supplement") at Exhibit 2).

Cable TV does object to Western Pacific's Supplement. If counsel for Western Pacific made any assertion to the contrary it is mistaken. Your letter's assumption that Cable TV does not object is also mistaken, as the date to file an opposition has not yet occurred. The Supplement was filed on the 9th of January 2013. Your letter is dated the 31st of January 2013 or a mere 22 days after the Supplement was filed. Cable TV's objection is not yet due. Cable TV's objection to the Supplement will be timely filed on or before the 11th of February 2013 which is the date pursuant to Sections 76.7(b)(1) and 76.61(a)(3), of the rules that the Oppositions to the Must Carry Complaint, which the Supplement seeks to clarify, is due.

Western Pacific has no right file a must carry complaint against Cable TV and furthermore has no right to supplement its must carry complaint to include Cable TV. Western Pacific acknowledges that it made a must carry demand against Cable TV which was properly served on Cable TV, at the address listed in COALS, on the 14th of September 2012. Western Pacific acknowledges that it received the October 1, 2012 letter from Cable TV which denied carriage of WACP because the transmitter was too far from the System's principal headend and because the station did not deliver a qualified signal to the system's principal headend. Section 76.61(a)(5)(i) is explicit that no must carry complaint is to be accepted by the Commission if it is filed later than 60 days after the denial by the cable television system operator. We take no position as to whether the must carry complaint that was filed on December 14, 2012 against Cablevision may have been proper, but it would not have been proper against Cable TV because it was well after the maximum 60 day period. Since the Complaint would not have been valid against Cable TV, there can be no basis for granting the Supplement. Moreover, Section 76.7(d) of the rules is explicit that additional motions or pleadings by any party will not be accepted.

Service Electric Cable TV, Inc., therefore respectfully requests that the Bureau either rescind your letter of the 31st of January 2013, or deny the Supplement.

Mark J. Palchick
TEL: (202) 857-4411
FAX: (202) 261-0011
EMAIL: MPalchick@wcsr.com
1200 Nineteenth Street, N.W.
Fifth Floor
Washington, DC 20036



Federal Communications Commission
Washington, D.C. 20554

January 31, 2013

M. Scott Johnson
Thomas J. Dougherty, Jr.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, Suite 1100
Arlington, VA 22209

Re: **CSR-8757-M, Docket No. 13-14**

Mr. Johnson,

We are in receipt of your motion of January 9th to Clarify, Supplement and Correct the record with respect to the mandatory carriage petition filed December 14, 2012, on behalf of your client, Western Pacific Broadcast LLC, Inc. As you allege in this motion, your initial must carry complaint was against Service Electric Cablevision, Inc. (SECI), but information has come to light necessitating that you add defendant's affiliate, Service Electric Cable Television, Inc. (SECTI), as a party.

Though Western Pacific did not initially have the proper name for SECTI, it states it served this affiliate with a carriage election letter at its correct business address and referenced in that letter a list of CUIDs and an associated PSID corresponding to this affiliate. Western Pacific received a return receipt from mailing this letter which shows that its election letter had been received by SECTI and the latter has not complained of any misidentification. Western Pacific also mailed a follow-up carriage demand letter to the same address, and even though it was addressed to SECI - the wrong entity, Western Pacific alleges that a SECTI officer replied and disputed that WACP delivered a good quality signal. Later, SECI's counsel also sent a response to Western Pacific's carriage demand letter and referenced a list of counties, two of which were only served by SECTI. Western Pacific states that only after its Petition was received by SECI in December was it informed that SECTI was a separate entity.

Given these facts, and particularly that the requested defendant has been served without objection, responded to the carriage demand, and has not opposed its addition as a party, we will grant the aforementioned motion and add Service Electric Cable Television, Inc., as a defendant. On a final note, you mention that SECTI's vice president has been served with your Petition by email, but we would request that you physically serve this new defendant with a copy of your Petition, and our 120 day statutory period will be tolled until SECTI files an opposition, if any. If SECTI is going to be represented jointly with SECI, they should inform us of this fact.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Banyai". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Simon Banyai
Attorney Advisor
Policy Division, Media Bureau

cc
Gary Lutzker, Esq.
Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W.,
Suite 800
Washington, DC 20036-6802

Exhibit 4

COALS Kwik Search:	Swoosh...						
Help Advanced	CommUnit/NCID:		State:				
Enter Callsign or Community Unit Id	Physical System Id:		Filing Types:				
Search & Reporting	State:		Start Date:		End Date:		
Cable Search	Community Name:						
	County Name:						
	Company Name:	(Check this box for wildcards on Company Name)					
CARs Search							
Profile	PSID		Community		County	Community	Legal Name
Create COALS Login	1711		Unit		Name	Name	
			PA0092		NORTHAMPTON	BETHLEHEM	SERVICE ELECTRIC CABLE TV INC 1045 HAMILTON STREET ALLENTOWN, PA, 18101
			PA0097		NORTHAMPTON	EASTON	SERVICE ELECTRIC CABLE TV INC
			PA0098		NORTHAMPTON	FORKS	SERVICE ELECTRIC CABLE TV INC
			PA0099		NORTHAMPTON	GLENDON	SERVICE ELECTRIC CABLE TV INC
			PA0108		NORTHAMPTON	PALMER	SERVICE ELECTRIC CABLE TV INC
			PA0109		NORTHAMPTON	PLAINFIELD	SERVICE ELECTRIC CABLE TV INC
			PA0112		NORTHAMPTON	STOCKERTOWN	SERVICE ELECTRIC CABLE TV INC
			PA0115		NORTHAMPTON	WEST EASTON	SERVICE ELECTRIC CABLE TV INC
			PA0117		NORTHAMPTON	WILLIAMS	SERVICE ELECTRIC CABLE TV INC
			PA0118		NORTHAMPTON	WILSON	SERVICE ELECTRIC CABLE TV INC
			PA0195		NORTHAMPTON	BANGOR	SERVICE ELECTRIC CABLE TV INC
			PA0197		NORTHAMPTON	EAST BANGOR	SERVICE ELECTRIC CABLE TV INC
			PA0198		NORTHAMPTON	ROSETO	SERVICE ELECTRIC CABLE TV INC
			PA0250		NORTHAMPTON	LOWER NAZARETH	SERVICE ELECTRIC CABLE TV INC
			PA0251		NORTHAMPTON	NAZARETH	SERVICE ELECTRIC CABLE TV INC
			PA0252		NORTHAMPTON	WILLIAMS	SERVICE ELECTRIC CABLE TV INC
			PA0253		BUCKS	RIEGELSVILLE	SERVICE ELECTRIC CABLE TV INC
			PA0254		NORTHAMPTON	TATAMY	SERVICE ELECTRIC CABLE TV INC
			PA0255		NORTHAMPTON	UPPER NAZARETH	SERVICE ELECTRIC CABLE TV INC
			PA0256		BUCKS	BRIDGETON	SERVICE ELECTRIC CABLE TV INC

			PA0289			LEHIGH	EMMAUS	SERVICE ELECTRIC CABLE TV INC
			PA0290			LEHIGH	MACUNGIE	SERVICE ELECTRIC CABLE TV INC
			PA0291			LEHIGH	LOWER MACUNGIE	SERVICE ELECTRIC CABLE TV INC
			PA0293			LEHIGH	SALISBURY	SERVICE ELECTRIC CABLE TV INC
			PA0294			LEHIGH	UPPER MILFORD	SERVICE ELECTRIC CABLE TV INC
			PA0413			NORTHAMPTON	PORTLAND	SERVICE ELECTRIC CABLE TV INC
			PA0478			LEHIGH	ALLENTOWN	SERVICE ELECTRIC CABLE TV INC
			PA0479			NORTHAMPTON	BETHLEHEM	SERVICE ELECTRIC CABLE TV INC
			PA0854			LEHIGH	ALBURTIS	SERVICE ELECTRIC CABLE TV INC
			PA0855			LEHIGH	COOPERSBURG	SERVICE ELECTRIC CABLE TV INC
			PA0856			LEHIGH	SALISBURY	SERVICE ELECTRIC CABLE TV INC
			PA0857			LEHIGH	WHITEHALL	SERVICE ELECTRIC CABLE TV INC
			PA0858			LEHIGH	SOUTH WHITEHALL	SERVICE ELECTRIC CABLE TV INC
			PA0859			LEHIGH	UPPER MACUNGIE	SERVICE ELECTRIC CABLE TV INC
			PA0860			LEHIGH	UPPER SAUCON	SERVICE ELECTRIC CABLE TV INC
			PA0861			LEHIGH	CATASAUQUA	SERVICE ELECTRIC CABLE TV INC
			PA0862			LEHIGH	LOWER MACUNGIE	SERVICE ELECTRIC CABLE TV INC
			PA0863			NORTHAMPTON	HELLERTOWN	SERVICE ELECTRIC CABLE TV INC
			PA0864			NORTHAMPTON	LOWER SAUCON	SERVICE ELECTRIC CABLE TV INC
			PA0865			NORTHAMPTON	HANOVER	SERVICE ELECTRIC CABLE TV INC
			PA0866			BUCKS	SPRINGFIELD	SERVICE ELECTRIC CABLE TV INC
			PA0867			LEHIGH	FOUNTAIN HILL	SERVICE ELECTRIC CABLE TV INC
			PA0920			NORTHAMPTON	UPPER MOUNT BETHEL	SERVICE ELECTRIC CABLE TV INC
			PA0921			NORTHAMPTON	PEN ARGYL	SERVICE ELECTRIC CABLE TV INC
			PA0922			NORTHAMPTON	WASHINGTON	SERVICE ELECTRIC CABLE TV INC
			PA0923			NORTHAMPTON	WIND GAP	SERVICE ELECTRIC CABLE TV INC
			PA0924			NORTHAMPTON	PLAINFIELD	SERVICE ELECTRIC CABLE TV INC
			PA0948			BUCKS	TINICUM	SERVICE ELECTRIC CABLE TV INC

			PA0951			NORTHAMPTON	BUSHKILL	SERVICE ELECTRIC CABLE TV INC
			PA0952			NORTHAMPTON	PALMER	SERVICE ELECTRIC CABLE TV INC
			PA1028			NORTHAMPTON	FREEMANSBURG	SERVICE ELECTRIC CABLE TV INC
			PA1336			LEHIGH	LOWER MILFORD	SERVICE ELECTRIC CABLE TV INC
			PA1341			NORTHAMPTON	BETHLEHEM	SERVICE ELECTRIC CABLE TV INC
			PA1342			NORTHAMPTON	EAST ALLEN	SERVICE ELECTRIC CABLE TV INC
			PA1368			NORTHAMPTON	MOORE	SERVICE ELECTRIC CABLE TV INC
			PA1373			LEHIGH	WEISENBERG	SERVICE ELECTRIC CABLE TV INC
			PA1374			LEHIGH	LOW HILL	SERVICE ELECTRIC CABLE TV INC
			PA1378			LEHIGH	NORTH WHITEHALL	SERVICE ELECTRIC CABLE TV INC
			PA1583			NORTHAMPTON	LOWER MT BETHEL	SERVICE ELECTRIC CABLE TV INC
			PA1674			LEHIGH	HANOVER	SERVICE ELECTRIC CABLE TV INC
			PA1970			BUCKS	NOCKAMIXION	SERVICE ELECTRIC CABLE TV INC
			PA1974			NORTHAMPTON	BATH	SERVICE ELECTRIC CABLE TV INC
			PA2059			BUCKS	DURHAM	SERVICE ELECTRIC CABLE TV INC
			PA2111			LEHIGH	COPLAY	SERVICE ELECTRIC CABLE TV INC
			PA2176			BUCKS	HAYCOCK	SERVICE ELECTRIC CABLE TV INC
			PA2220			LEHIGH	LYNN	SERVICE ELECTRIC CABLE TV INC
			PA2305			BERKS	GREENWICH	SERVICE ELECTRIC CABLE TV INC
			PA2528			NORTHAMPTON	ALLEN	SERVICE ELECTRIC CABLE TV INC
			PA2658			BUCKS	RICHLAND	SERVICE ELECTRIC CABLE TV INC
			PA2662			BERKS	LONGSWAMP	SERVICE ELECTRIC CABLE TV INC
			PA2709			NORTHAMPTON	NORTH CATASAUQUA	SERVICE ELECTRIC CABLE TV INC
			PA2745			BERKS	HEREFORD	SERVICE ELECTRIC CABLE TV INC
			PA2964			NORTHAMPTON	LOWER MT BETHEL	SERVICE ELECTRIC CABLE TV INC
			PA3225			NORTHAMPTON	CHAPMAN	SERVICE ELECTRIC CABLE TV INC
			PA3452			BUCKS	MILFORD	SERVICE ELECTRIC CABLE TV INC
			PA3453			NORTHAMPTON	NORTHAMPTON	SERVICE ELECTRIC CABLE TV INC