

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC

In re)	
)	
Petition to Show Cause)	CSR-8775-M
KJLA, LLC)	Docket No. 13-63
)	
Against CCO SoCal I, LLC)	
)	
)	
)	

To: The Secretary
Attn: Chief, Media Bureau

REPLY TO OPPOSITION TO PETITION

KJLA, LLC (“KJLA”), the licensee of Full-Service Television Station KJLA, Ventura, California (“KJLA” or the “Station”), by its attorneys and pursuant to Section 76.7 of the Commission’s Rules, hereby replies to the Opposition to Petition filed by CCO SoCal I, LLC, a subsidiary of Charter Communications, Inc. (“Charter”), in response to Petition for Issuance of Order to Show Cause requesting that Charter be ordered to resume carriage of the Station’s digital signal to Charter’s analog service subscribers in the Los Angeles DMA until such time as Charter provides adequate notice to both KJLA and Charter’s subscribers of the removal of KJLA from Charter’s analog cable service, and, further, until Charter provides adequate information and affordable equipment enabling Charter’s analog service subscribers to access KJLA on Charter’s cable service. In support thereof, KJLA states as follows.

This matter relates to the Commission’s decision in *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Fifth Report and Order

(the “2012 Viewability Order”),¹ where it revisited its original viewability rule, adopted in 2007, which required cable operators with hybrid systems to carry digital must-carry signals in an analog format for the benefit of analog service subscribers.² In the 2012 Viewability Order, the Commission decided to allow the 2007 viewability rule to sunset and it reinterpreted the Communications Act of 1934, as amended, to permit cable operators to rely upon additional equipment, such as Digital Transport Adapters (“DTAs”) or similar technological means, to satisfy the must-carry signal viewability requirement set forth in Section 614(b)(7) of the Act.³ According to the Commission.

KJLA’s Petition arises from Charter’s actions to remove certain, but not all, of the broadcast stations available to analog subscribers on or after February 12, 2013. KJLA was not informed as to this planned change by Charter, as required by law, but from information provided by analog subscribers and other affected broadcasters. KJLA attempted to ascertain, to no avail, the cost of the DTAs or other equipment Charter was offering to analog subscribers in order for them to be able to access stations, such as KJLA, that would no longer be made available to such customers. Only with the filing of Charter’s Opposition has KJLA been able to secure full and complete information as to Charter’s plans for altering its analog cable lineup and notifying its analog subscribers how they might continue to be able to view KJLA and certain other broadcast stations.

¹ 27 FCC Rcd 6529 (2012), *Petition for Review Pending*.

² *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064 (2007) (“2007 Viewability Order”).

³ See 47 U.S.C. § 534(b)(7) (stating that broadcast signals subject to mandatory carriage “shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator for which a cable operator provides a connection”).

In considering Charter's Opposition, KJLA urges the Commission to examine closely not only what Charter argues, but that which Charter ignores in its pleading. KJLA submits that its arguments, together with what is left unsaid, provide the necessary basis for the Commission to require, in preserving the intent of the 2012 Viewability Order, that the Station be restored to the station lineup available to Charter's analog subscribers in the Los Angeles DMA.

Initially, KJLA argued that it had not been provided with the requisite 90 days' advance notice of the termination of the Station's delivery to Charter's analog subscribers. KJLA advised in its Petition that it had not received notice of termination from Charter and was only alerted to the termination by Charter subscribers and other broadcasters. Charter's response is that it delivered a certified mail letter to KJLA, on or about November 13, 2012, in which the Station was so informed.⁴

KJLA has no evidence of the receipt of the Charter letter. In regard to whether Charter exercised good faith efforts to notify KJLA as to the intended change in broadcast stations available to analog subscribers, KJLA wishes to point out to the Commission the following language from the purported letter from Charter to KJLA which raises a material question as to Charter's credibility in this proceeding (Exhibit 2 to Charter Opposition):

There will be continued carriage of your station during this migration and our customers will continue to enjoy the benefits of your station's programming. **Charter looks forward to working cooperatively with you during this transition. Someone will be contacting you closer to the migration date to coordinate the notification of our mutual viewers.** (emphasis added)

⁴ Charter offers (as Exhibit 3 to its Opposition), as evidence of its delivery of the November 13, 2012 notice to KJLA, two United States Post Service documents. Neither of these documents show KJLA or its address as the recipient and mailing address for a letter from Charter. Moreover, one of the Postal Service documents refers to "first class mail" while Charter claims that it sent a "certified mail" delivery. Finally, the date of delivery shown on these documents is November 20, 2012, less than 90 days prior to the termination of the analog carriage of KJLA by Charter.

Just as KJLA did not receive the purported November 13, 2012 letter, KJLA never received any call from someone at Charter (and Charter does not contend that it carried out the commitment it purportedly made) and KJLA wishes to inform the Commission that there was, to the best of KJLA's knowledge, no coordinated or uncoordinated effort undertaken by Charter to notify mutual viewers. Having not received the letter, KJLA was not in a position to communicate with Charter in order to effectuate the coordination of notification. If Charter did not carry out the commitment contained in its purported letter, its credibility in having delivered a notification letter to KJLA is clearly at issue.

KJLA can only conclude from its absence of notice and Charter's failure to carry out the coordinated notification Charter contends it was willing to undertake, that Charter had no interest in complying with the required notification process. The licensee did not receive a timely notice, which Charter could have ameliorated by carrying out its commitment to coordinate notification. Having done neither, Charter has failed to meet its notice obligation and its failure to do so requires that the Station's carriage be restored immediately.

If Charter's lack of notice to KJLA was not bad enough, Charter hardly treated its analog subscribers with any greater degree of courtesy and assistance. The record in this proceeding evidences that there were only three notification efforts were used by Charter to alert subscribers as to their imminent loss of certain over-the-air broadcast stations. One, as pointed out in KJLA's Petition, was that parties receiving paper bills⁵ had a short and confusing statement on the bill as to the imminent signal removal. Second, a legal notice, with the same minimal content as contained in the bill notification, was published on one occasion in a number of local publications. Finally, a letter was apparently sent to Charter customers (Exhibit 4 to Charter

⁵ A customer that used an electronic payment arrangement would not even receive the bill.

Opposition), providing a bit more explanatory information. KJLA submits that this is inadequate notice at best, when one compares these efforts to those of the digital transition, to inform analog subscribers as to the change in their service.⁶

KJLA urges the Commission to conclude that these minimal efforts failed to provide satisfactory notice to Charter's analog subscribers. Couldn't Charter have taken out display advertisements in the newspapers and done multiple display advertisements? Couldn't Charter have run crawls or informational advertising in its own programming describing the proposed change in service? Couldn't Charter have issued more than one letter to its analog customers and used its call center staff to contact analog subscribers? Couldn't the letter that was written have been more informative as what actions Charter was intending to take and what actions needed to be taken by subscribers in response thereto?

As to the notification letter, the only piece of descriptive material issued by Charter, it was so poorly prepared and uninformative that Charter should not be entitled to rely on it as a reliable piece of customer information. First, where the offer of the set-top boxes is made, it is followed by an "****". However, when one examines that letter, there is no further "****". One is left confused as to what terms are being referred to and what the "****" means. Further, at the bottom of the page, in a font requiring use of a magnifying glass, the following language is included:

Offer is valid to qualified residential customers who have no outstanding obligation to Charter. Standard rates apply after promotional period. Standard rates will apply for installation, taxes, fees, surcharges and additional equipment. On Demand programming varies by level of service, pricing, ratings and scheduling are subject to change. Standard rates apply to Charter DVR service fee. Charter leased digital equipment or CableCARD

⁶ Charter criticizes KJLA for not undertaking any notification efforts of its own. Having not been on notice as to what Charter intended in the way of a service change, KJLA was not able to launch any effort of its own. As KJLA has described in its Petition, its efforts in contacting Charter's customer service operation only resulted in information on how one could become a digital subscriber and the offers available to digital subscribers. KJLA simply lacked, until now, the information necessary to commence any informational campaign.

required to view programming channels except for Basic Service with customer owned TV equipped with digital QAM Tuner. Charter leased digital equipment required to view PPV and On Demand programming. HD capable equipment required to view HD programming (where available). All programming may not be available to CableCARD customers. Service is subject to applicable service terms and conditions, which are subject to change. Restrictions apply.

After reading this language, would anyone know what the terms and conditions on offer happen to be? Is this a free offer or one with any number of terms and conditions, all of which “are subject to change?” If Charter was intending to provide a free offer, why include these statements which only serve to confuse? What can be concluded is that any subscriber receiving this letter would be uncertain as to what changes the subscriber was facing and what it would cost in order to continue to receive the broadcast stations referred to.

Finally, one cannot help but notice that there is no reference in the offer, or Charter’s Opposition, to the cable operator supplying a simple DTA,⁷ which is the piece of equipment that is extensively discussed by the Commission in the 2012 Viewability Order. *Id.* at 6539-6541. Instead, Charter is providing its analog subscribers with set-top boxes that will make it easier for Charter to market digital service to them. In fact, as KJLA has learned from its calls to Charter’s call center, Charter has been attempting to turn its analog subscribers into high paying digital subscribers. Even these boxes were only made available at no cost for two years, though Charter, in its Opposition, is now indicating that if it remains a hybrid system operator after the two-year period, that it will continue to offer the boxes for free. Would it not have been appropriate for Charter to tell this to its subscribers and not just to KJLA and the Commission?

⁷ While Charter uses the term “digital receiver” in its letter, it is obvious that the digital receiver is more than a DTA as Charter promotes features, such as On Demand service, that an analog subscriber would otherwise be unable to available itself of. “DTAs are simple one-way digital-to-analog set-top boxes that can provide cable consumers with access to the basic service tier and the expanded basis service tier.” *Id.* at 6539 n. 60.

Charter claims that despite its minimal promotional efforts that it has “supplied its subscribers with thousands of free set-top boxes...” An examination of this statement is yet another example of Charter leaving matters of significance left unsaid. As the supplier of set-top boxes, why does Charter not know to some degree of precision what the number of set-top boxes given away for free happens to be.⁸ Also, even assuming that we are dealing with some number in the thousands, why does Charter not tell us what the current number of its analog subscribers might be. Assuming that Charter has 300,000 subscribers⁹ and has given away 3,000 set-top boxes, it has only provided set-top boxes to one percent of its subscribers. That is hardly enough to enable all, or even a significant portion, of its analog subscribers to continue to be able to view the Station.

Ultimately, as KJLA has previously noted, Charter has chosen to divide broadcast stations and analog subscribers into two classes: all stations available to subscribers who receive digital service and a far more limited group of stations (not including must-carry stations) available to the analog subscriber. This situation truly does violate the requirement in Section 614(b)(7) of the Act that each must-carry signal “shall be provided to every subscriber to a cable system.”¹⁰ The problem is that the broadcast stations who serve analog subscribers and the

⁸ This language is also curiously vague. Does Charter mean that thousands of subscribers in the Los Angeles DMA requested and receive free set-top boxes or is Charter referring to its subscribers throughout the country? In calling Charter’s call center, one learns that a free set-top box is an offer that is provided regularly to Charter customers who are willing to convert. Hence, the Commission should not accept Charter’s vague statement unless it has confirmation that the number reflects only those Los Angeles DMA customers who wished to maintain their analog service television lineup.

⁹ The 300,000 subscriber number was reported in a story in the Los Angeles Times on October 26, 2012. <http://www.latimes.com/sports/lakersnow/la-sp-ln-lakers-coming-charter-fios-20121026,0,2144274.story>

¹⁰ 47 U.S.C. § 534(b)(7). As the Commission has noted, “this provision requires that every class of subscriber must receive all must carry signals.” 2012 Viewability Order at ¶ 9 (citation omitted).

analog subscribers who rely on the programming contained in the removed broadcast stations, because the stations carry foreign-language and multicultural programming and the analog subscribers are interesting in viewing such programming, are directly and detrimentally affected by Charter's actions. Unless analog subscribers respond to the confusing and uninformative letter provided by Charter, they have no recourse but to go without these stations, thereby limiting their viewing opportunities and the ability of broadcasters to reach them.

Charter, despite its interest in becoming a digital-only cable operator, continues to operate as a hybrid system. The Commission expected, in enacting the 2012 Viewability Order, that Charter would act in good faith in taking advantage of the provisions of that decision. Instead, Charter's actions have been as minimal as possible and fall far short of cable operators' promises and the Commission's expectations, thereby undercutting the entire rationale on which Charter was given the ability to dispense with carriage of broadcast stations on its analog service. In so doing, Charter has neither notified nor cooperated with KJLA, provided its own analog subscribers with minimal and confusing information, and elected to continue to provide broadcast service to its analog subscribers consisting of stations that Charter has chosen to give a preference to, rather than all stations. These all represent a set of practices that the Commission did not expect of Charter.

The evidence in this case is such that Charter should not be allowed to benefit from the actions taken in the 2012 Viewability Order. On the contrary, the Commission must direct that Charter renew its carriage of the Station's signal for the benefit of Charter's analog service subscribers and to ensure that all broadcast stations in the Los Angeles DMA are provided with equal treatment.

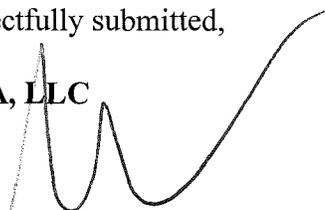
WHEREFORE, for the foregoing reasons, KJLA, LLC respectfully requests that the Media Bureau issue a show cause order against Charter Communications, Inc. and require Charter to provide Charter's analog subscribers with continued access to the signal of Full Service Television Station KJLA, Ventura, California.

Verification

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,

KJLA, LLC



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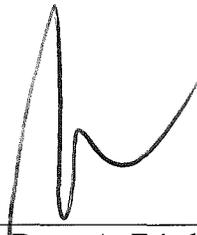
Counsel for KJLA, LLC

April 15, 2013

CERTIFICATE OF SERVICE

I, Barry A. Friedman, hereby certify that I have served on this 15th day of April, 2013, a copy of the foregoing **REPLY TO OPPOSITION TO PETITION** on the following party by first-class mail, postage pre-paid:

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A handwritten signature in black ink, appearing to be 'B. Friedman', written over a horizontal line.

Barry A. Friedman