

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

| | | |
|---------------------------------|---|------------------|
| _____ |) | |
| In re |) | |
| |) | MB Docket 13-106 |
| Gray Television Licensee, LLC |) | CSR-8781-M |
| |) | |
| Request for Carriage of KSNB-TV |) | |
| Superior, NE |) | |
| _____ |) | |

REPLY TO ANSWER TO COMPLAINT FOR CARRIAGE

Gray Television Licensee, LLC (“Gray”), licensee of KSNB-TV, Superior, Nebraska, pursuant to Sections 76.7(c) of the Rules of the Federal Communications Commission,¹ hereby files this Reply to the Answer of Zito Media, L.P. (“Zito”) in the above captioned proceeding. Zito apparently refuses to retransmit KSNB-TV because Gray delivers the station’s programming via a multicast channel for another broadcast station in the market. Zito’s excuse is without merit. Accordingly, the Commission should issue an order requiring that Zito promptly launch KSNB-TV and honor the station’s statutory channel position rights.

The underlying facts in this proceeding are not in dispute. KSNB-TV is a broadcast television station licensed to a community in the Lincoln & Hasting-Kearney Designated Market Area (“DMA”). It broadcasts a full power signal on major channel number 4. Despite Gray’s request for carriage, Zito has launched the station on only a handful of Zito’s Systems in the DMA, and it does not carry the station on cable channel 4 or in high definition format on any

¹ 47 C.F.R. §§76.7(c).

System.² Accordingly, on April 12, 2013, Gray filed a Complaint for Carriage (the “Complaint”) against Zito, which demonstrates that KSNB-TV is entitled to such carriage on the Systems. Zito submitted its Answer by letter dated April 18, 2013.³ Zito’s Answer does not deny that KSNB-TV qualifies for mandatory carriage under the Commission’s rules, and the Answer does not claim that the network of full power, low power, Class A, and translator stations that Gray uses to deliver KSNB-TV’s signal across Nebraska is inadequate.⁴ Indeed, the Answer acknowledges that Zito receives and retransmits KSNB-TV’s programming on several of Zito’s Systems (albeit not on Channel 4 and not in high definition). Instead, Zito responds that it has no obligation to launch KSNB-TV on its Systems because it cannot receive the VHF signal from KSNB-TV – ignoring the many alternative means that Gray uses to deliver the station’s programming.

Commission rules allow broadcasters to deliver the primary signal for a must carry station via alternative means, including multicast channels and translators.⁵ Indeed, a few months ago, the FCC expressly ruled that a must carry station can use another station’s multicast channel to deliver a good quality signal:

We find that use of another station’s multicast channel (*i.e.* WJPX’s 24.2) could be a possible method for delivering WIRS as could the use of fiber.⁶

² Exhibit A contains a summary of Zito’s current carriage of KSNB-TV based on the channel lineups available on Zito’s website. Each cable system identified in Exhibit A is hereinafter referred to as a “System.” *See* http://www.zitomedia.com/index.php?option=com_content&view=category&id=57&Itemid=455

³ A copy of Zito’s letter is attached as Exhibit B.

⁴ Gray outlined those alternative means in its Complaint, in an email to Zito dated March 26, 2013, a letter dated March 11, 2013, and in a phone conversation on April 15, 2013. A copy of Gray’s letter to Zito dated March 11, 2013, is attached to this Reply as Exhibit C.

⁵ *Jovon Broadcasting Corp. v. RCN Corp.*, 18 FCC Rcd 8145 (MB 2993) (“[A] station may generally use any delivery means at its disposal to provide a good quality signal to the cable operator’s headend.”).

⁶ *America-CV Station Group, Inc. v. Liberty Cablevision of Puerto Rico, Inc.*, 28 FCC Rcd 29, 33 ¶ 8 (MB 2013).

Accordingly, Zito's claim that it need not retransmit KSNB-TV's primary stream because Gray delivers the programming via a multicast channel for another broadcast station is wrong.

To Gray's knowledge, all of Zito's Systems currently receive a good quality signal for KSNB-TV in high definition format. Gray's CBS affiliate KOLN-TV and its satellite KGIN-TV rebroadcast KSNB-TV's primary stream in high definition format on their multicast channels, and each System receives over the air this high definition signal from either KOLN-TV or KGIN-TV. Therefore, Zito almost certainly also receives a good quality signal for KSNB-TV.

Zito does not dispute any of the key facts in this proceeding. Zito does not deny that KSNB-TV qualifies for mandatory carriage on all of Zito's Systems in the DMA. Moreover, Zito does not deny that it receives Gray's CBS programming over the air at all of its Systems. Therefore, Zito necessarily must also receive KSNB-TV at each cable headend because the same stations that deliver Gray's CBS programming also deliver the primary signal for KSNB-TV in high definition format on a multicast channel. As a result, Zito must launch KSNB-TV on each System (1) in either standard definition or analog format on Channel 4 and (2) in high definition format on any System with greater than 2,500 subscribers and greater than 552 MHz capacity.⁷

CONCLUSION

Over the last few weeks, Gray has filed several carriage complaints against various cable operators in the Lincoln & Hastings-Kearney DMA. In those instances, a few days after filing the complaint, the parties were able to resolve their dispute, and Gray promptly withdrew its complaint. Gray is hopeful for the same outcome here. Nevertheless, if Zito does not agree to launch KSNB-TV as required under Commission rules and on the channel position required

⁷ See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, *Fourth Report & Order*, 23 FCC Rcd 13618 (2008); Carriage of Digital Television Broadcast Signals, *First Report & Order*, 16 FCC Rcd 2598, 2629-30 (2001) ("[A] broadcast signal delivered in HDTV must be carried in HDTV.").

under Commission rules, Gray respectfully requests that the Commission issue a decision requiring that Zito do so immediately.

VERIFICATION

To the best of our knowledge, information and belief formed after reasonable inquiry, this Reply 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.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC



Kevin P. Latek
Vice President, Law and Development
Gray Television, Inc.
4370 Peachtree Rd, NE
Atlanta, GA 30319
202-505-2401

May 1, 2013

EXHIBIT A

Summary of Carriage of KSNB-TV on Zito Systems

| Community | CUID | Current Channel Position for KSNB-TV in SD/Analog | Current Channel Position in HD | Gray Station Carried | HD System* |
|------------------|--------|---|--------------------------------|----------------------|------------|
| Sutton | NE0124 | 55 | None | KOLN | Yes |
| Harvard | NE0129 | 55 | None | KOLN | Yes |
| Clay Center | NE0130 | 55 | None | KOLN | Yes |
| Edgar | NE0248 | 55 | None | KOLN | Yes |
| Fairfield | NE0267 | 55 | None | KOLN | Yes |
| Elkhorn | NE0084 | None | N/A | KOLN | No |
| Geneva | NE0071 | 55 | None | KOLN | Yes |
| Exeter | NE0133 | 55 | None | KOLN | Yes |
| Fairmont | NE0134 | 55 | None | KOLN | Yes |
| Shickley | NE0144 | 55 | None | KOLN | Yes |
| Milligan | NE0250 | 55 | None | KOLN | Yes |
| Wymore | NE0045 | None | None | KOLN | Yes |
| Blue Springs | NE0046 | None | None | KOLN | Yes |
| Clatonia | NE0226 | None | None | KOLN | Yes |
| Grand Island (E) | NE0280 | None | N/A | KGIN | No |
| Plymouth | NE0143 | None | None | KOLN | Yes |
| Bennet | NE0200 | None | None | KOLN | Yes |
| Malcolm | NE0211 | None | N/A | KOLN | No |
| Hallam | NE0225 | None | None | KOLN | Yes |
| Hickman | NE0332 | None | None | KOLN | Yes |
| Nelson | NE0364 | None | N/A | KOLN | No |
| Wilber | NE0099 | None | None | KOLN | Yes |
| Dewitt | NE0108 | None | None | KOLN | Yes |
| Friend | NE0121 | None | None | KOLN | Yes |
| Dorchester | NE0246 | None | None | KOLN | Yes |
| Milford | NE0116 | None | None | KOLN | Yes |
| Utica | NE0148 | None | N/A | KOLN | No |
| Pleasant Dale | NE0241 | None | None | KOLN | Yes |
| Beaver Crossing | NE0245 | None | N/A | KOLN | No |
| McCool Junction | NE0145 | 55 | None | KOLN | Yes |
| Waco | NE0244 | None | N/A | KOLN | No |

* Given the number of high definition channels available on this system according to the channel lineup on Zito's website, each system noted as "yes" likely has a channel capacity exceeding 552 MHz. Thus, if this system has more than 2,500 subscribers, it would be required to launch KSNB-TV in high definition format. See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, *Fourth Report & Order*, 23 FCC Rcd 13618 (2008).

EXHIBIT B

Zito Media, L.P.

106 Steerbrook Road
Coudersport, PA 16915

April 18, 2013

Jason Effinger
President
Brent Haun
Chief Engineer
KOLN/KGIN/KSNB
840 North 40th
Lincoln, NE 68503

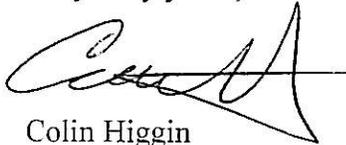
Kevin Latek
Vice President, Law and Development
Gray Television, Inc.
4370 Peachtree Rd, NE
Atlanta, GA 30319

Re: Carriage of KSNB

Dear Mr. Effinger:

In response to your complaint for carriage of KSNB-TV filed with the FCC, we are unable to receive the VHF signal of your primary KSNB channel from York, Nebraska at any of our head ends. We are willing to coordinate with you so you may test the VHF signal strength at each of our head ends; such coordination can be done with our technician Vance Wewel, who can be contacted at 814-203-9225. We voluntarily carry your secondary multicast KSNB channel in our Clay Center and Geneva, Nebraska systems but as you are aware, all of your secondary multicast channel signals are not entitled to mandatory carriage. Please call me at 814-260-9588 if you have any questions.

Very truly yours,



Colin Higgin
Vice President and General Counsel
Zito Media, L.P.

cc: Steven A. Broeckaert, Deputy Bureau Chief, Media Bureau, FCC, Nancy Murphy, Associate Chief, Media Bureau, FCC

EXHIBIT C

Troy Frankforter

From: Troy Frankforter
Sent: Tuesday, March 26, 2013 8:34 AM
To: 'colin.higgin@zitomedia.com'
Subject: 2013 KSNB letter to Zito Media (Galaxy).docx
Attachments: 2013 KSNB letter to Zito Media (Galaxy).docx

Colin,

Attached is a letter you would have received by March 15, requesting must-carry status for KSNB.

Please confirm carriage, effective date and channel placement on both analog and digital basic.

Thanks,
Troy Frankforter
Operations Manager
KOLN/KGIN/KSNB
Lincoln, NE



March 11, 2013

Shay Borders
Zito Media (Galaxy)
1718 Barlow Rd
Wickliffe, KY 42087

Re: KSNB-TV, Channel 4

Dear Shay Borders:

KOLN/KGIN 10/11 is pleased to announce that, on February 25, 2013, we acquired from Colins Broadcasting Corporation the FCC license and essentially all other assets of television station KSNB-TV, which is licensed to Superior, Nebraska, in the Lincoln DMA. **KSNB-TV defaulted to must-carry status on all cable systems serving the Lincoln DMA for the current three-year carriage cycle.**

On March 3, 2013, Gray completed a technical upgrade of the station and ceased its broadcasts of the Antenna TV program service. As of today, KSNB-TV broadcasts a single program stream in High Definition from a tower located near York, Nebraska. In particular, KSNB-TV Channel 4.1 now broadcasts in HD the same programming that KOLN and KGIN and their network of low power translators have all broadcast in SD on their respective secondary channels for the past several years.

On or about April 1st, 10/11 will re-launch KSNB-TV as *10/11 Central Nebraska*, a high-definition broadcast channel focusing on the needs and interests of the greater Central Nebraska region. *10/11 Central Nebraska* features the area's first high-definition live 5:30 PM and 9pm newscasts. Both newscasts are devoted exclusively to the news weather and sports that matter most to the people of Central Nebraska. It is our goal to continue to find the best way to serve the people of Nebraska. Our purchase and operation of this new station is evidence of our commitment to bring more local choice to the people of Grand Island, Hastings, and Kearney and beyond.

KSNB-TV's programming will continue to include locally produced programming (i.e., newscasts at 5:30PM and 9:00PM, *Pure Nebraska*, *10/11 PrepZone Weekly*, and *Star City Buzz*). The lineup also includes popular primetime network programming from *MyNetworkTV* such as *House*, *Bones*, *Monk* and *Law & Order: SVU*, and syndicated favorites such as *30 Rock*, *Frasier*, & *the Husker Coaches Shows*. Much of the station's programming was or is originally produced in HD format.

KSNB-TV's former licensee may have contacted you about launching the station pursuant to its must-carry rights on your cable systems serving the Lincoln DMA. It appears that your cable system does not carry KSNB-TV, perhaps due to the station's previous inability to deliver a good quality signal to the applicable headend. In any event, our acquisition and control of the station now likely resolve any signal reception issues.

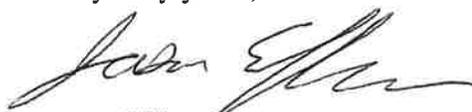
In particular, Gray is now able to deliver a good quality signal of KSNB-TV's program service through its network of full-power television stations and low power translators throughout the Lincoln market, in some places in SD format and in other places in HD format. This network is comprised of the following transmitters:

| Station | RF Channel | Virtual Channel | Primary Channel | Secondary Channel |
|--------------------------|------------|-----------------|-----------------|-------------------|
| KOLN-TV, Lincoln | 10 | 10 | CBS-HD | KSNB simulcast |
| KGIN-TV, Grand Island | 11 | 11 | CBS-HD | KSNB simulcast |
| KSNB-TV, Superior | 4 | 4 | MYTV-HD | |
| K43FX, O'Neill | 43 | 10 | KOLN simulcast | KSNB simulcast |
| K32HI-D, Neligh | 32 | 10 | KOLN simulcast | KSNB simulcast |
| K25GM-D, Newport | 25 | 10 | KOLN simulcast | KSNB simulcast |
| K30FV-D, Cambridge | 30 | 11 | KGIN simulcast | KSNB simulcast |
| K33FF-D, Wallace | 33 | 11 | KGIN simulcast | KSNB simulcast |
| K24HG-D, Cozad | 24 | 11 | KGIN simulcast | KSNB simulcast |
| KNPL-LD, North Platte | 25 | 11 | KGIN simulcast | KSNB simulcast |
| K18CD-D, Lincoln | 18 | 18 | KSNB simulcast | KSNB simulcast |

Gray is confident that KSNB-TV now delivers a good quality signal sufficient to qualify KSNB-TV for carriage on every cable system that carries KOLN or KGIN in the Lincoln. If necessary, we are happy to work with you to test the station's signal strength at the appropriate locations. In addition, we will undertake, at our sole cost, such efforts as are necessary to deliver a good quality signal to the headend. We elect carriage of KSNB-TV on cable channel position 4 consistent with the station's RF/Virtual Channel.

Please contact KOLN/KGIN Chief Engineer Brent Haun at 402-467-9218 or at Brent.Haun@1011Now.com regarding any technical issues. Please contact Operations Manager Troy Frankforter at Troy.Frankforter@1011Now.com regarding any other questions involving KSNB-TV.

Very truly yours,



Jason Effinger
President, KOLN/KGIN/KSNB

cc via email: Mr. Brent Haun (KOLN/KGIN CE)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Shay Borders
Zito Media (Galaxy Cable)
1718 Barlow Rd
Wickliffe, KY 42087

2. Article Number
(Transfer from service label) 7010 2780 0000 1482 4820

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X *Cathy Kissiar* Agent
 Addressee

B. Received by (Printed Name)
Cathy Kissiar

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
 WICKLIFFE KY 42087

OFFICIAL USE

| | | |
|--|---------|------|
| Postage | \$ 0.46 | 0505 |
| Certified Fee | \$3.10 | |
| Return Receipt Fee (Endorsement Required) | \$0.00 | |
| Restricted Delivery Fee (Endorsement Required) | \$0.00 | |
| Total Postage & Fees | \$3.56 | |

Posmark
 03/11/2013

Sent To
 Street, Apt. No., or PO Box No. Zito Media (Galaxy Cable)
 1718 Barlow Rd
 City, State, ZIP+4 Wickliffe, KY 42087

PS Form 3800, August 2006 See Reverse for Instructions

CERTIFICATE OF SERVICE

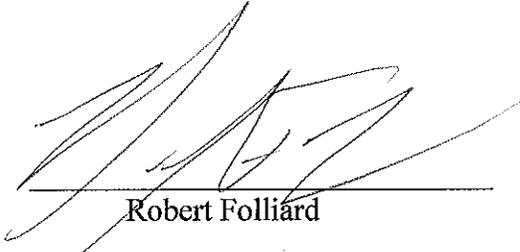
I, Robert Folliard, do hereby certify that on this 1st day of May 2013, I caused a copy of the foregoing **REPLY** to be served by email to the following:

Steven A Broeckaert
Deputy Bureau Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 3-C742
Washington, DC 20554

Nancy Murphy
Associate Chief, Media Bureau
Federal Communications Commission
455 Twelfth Street, S.W.
Washington, DC 20554

Zito Media, L.P.
106 Steerbrook Rd.
Coudersport, PA 16915
Attn: Colin Higgin, Vice President &
General Counsel

* Delivery via email.


Robert Folliard