

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

In the Matter of:)	
)	
Armstrong Utilities, Inc.)	CSR 8752-M
)	Docket No. 12-364
Carriage Complaint of Western Pacific)	
Broadcast, LLC, WACP-TV,)	
Atlantic City, New Jersey)	
)	
To: Media Bureau)	

MOTION FOR LEAVE TO FILE A SUPPLEMENTAL OPPOSITION

Consistent with 47 C.F.R § 76.7(d), Armstrong Utilities, Inc. (“Armstrong”) requests leave to file a Supplemental Opposition in this case, which includes a Supplemental Engineering Statement by Armstrong’s Vice President of Engineering. The Supplemental Opposition and accompanying Engineering Statement demonstrate that, even after installing the additional equipment provided by WACP, the station delivers a poor quality signal to Armstrong’s headend.

The Supplemental Opposition addresses a new issue and facts that have arisen since Armstrong filed its Opposition to WACP’s Complaint.¹ Armstrong explained in its Opposition how the low transmitter power and the distance between WACP’s transmitter and Armstrong’s Oxford headend resulted in inadequate signal strength to deliver a good quality signal. After Armstrong filed its Opposition on January 4, 2013, Armstrong and WACP engaged in engineering discussions to attempt to address the Station’s signal problems. These discussions culminated in Armstrong installing a preamplifier and filter at its headend, selected and provided

¹ See *Carriage Complaint of Western Pacific Broadcast, LLC, WACP-TV, Atlantic City, New Jersey*, CSR 8752-M, Opposition of Armstrong Utilities, Inc. (filed January 4, 2013) (“Opposition”); *Carriage Complaint Against Armstrong Utilities, Inc. 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*, CSR-8752-M (filed December 6, 2012) (“Complaint”).

by WACP. As explained in the Supplemental Opposition, this new equipment boosts WACP's signal *strength*, but the picture *quality* of the signal remains grossly substandard. The Supplemental Opposition is necessary to reflect how the installation of this new equipment nevertheless results in WACP failing to deliver a good quality signal and why the Complaint must accordingly fail.

Media Bureau precedent provides ample authority for grant of this motion. The Bureau has found that the introduction of new material facts and issues that could not have been discovered in the usual time periods and rounds of pleading support a finding of extraordinary circumstances to permit a supplemental filing consistent with Section 76.7(d).² Armstrong's Supplemental Opposition addresses the installation of equipment *after* its Opposition was filed, and provides detailed engineering evidence, photographs, and analysis explaining the substandard picture quality of WACP's signal. This evidence and analysis could not have been provided in Armstrong's earlier filing. As cited in the Supplemental Opposition, *WRNN v. Cablevision* also supports accepting supplemental filings in must-carry disputes involving signal quality. In that case, supplemental filings were accepted containing engineering analysis and other evidence concerning poor picture quality following installation of specialized amplification equipment to boost signal strength—all information gathered after the cable operator initially

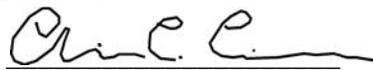
² See, e.g., *Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, Petition for Determination of Effective Competition in Six Blaine, Minnesota Franchise Areas*, Memorandum Opinion and Order, 28 FCC Rcd 5508 ¶ 1 n.4 (2013) (finding an extraordinary circumstance given “the revelation of new facts and claims that were material and could not have been discovered in the usual time periods and rounds of pleadings”); *Petition of the City of Boston, Massachusetts for Recertification to Regulate the Basic Cable Service Rates of Comcast Cable Communications, LLC (CUID MA0182)*, Memorandum Opinion and Order, 27 FCC Rcd 3763 ¶ 1 n.7 (2012) (finding an extraordinary circumstance given the emergence of a “new issue”).

opposed the broadcaster's complaint.³ The Bureau should similarly allow Armstrong to file its Supplemental Opposition.

For the foregoing reasons, Armstrong requests that the Media Bureau grant leave for it to file its Supplemental Opposition.

The undersigned verifies that to the best of his or her knowledge, information and belief formed after reasonable inquiry, this Motion is well grounded in fact and is warranted by existing law, and it is not interposed for any improper purpose.

Respectfully submitted,

By: 

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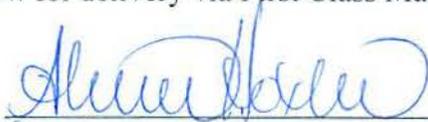
June 28, 2013

Attorneys for Armstrong Utilities, Inc.

³ See *WRNN-TV Associates Limited Partnership v. Cablevision Systems Corporation*, CSR-4774-M, 13 FCC Rcd 12654 ¶¶ 8-14 (CSB 1998) (describing a series of supplemental letters sent to the Commission describing efforts to resolve signal quality issues through engineering solutions).

Certificate of Service

I, Alma Hoxha, paralegal with Cinnamon Mueller, certify that copies of the foregoing Motion were delivered by me to the United States Postal Service on June 28, 2013 to be delivered to the person listed below for delivery via First Class Mail, postage prepaid, and email.



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