

**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,)	
Atlantic City, New Jersey)	
)	
To: Media Bureau)	

**OPPOSITION TO AND MOTION TO STRIKE
WACP’S TENTH REQUEST FOR EXTENSION OF TIME**

Armstrong Utilities, Inc. (“Armstrong”) opposes the Request for Further Extension of Time filed by Western Pacific Broadcast, LLC, licensee of WACP (“WACP”).¹ WACP pleads for its tenth extension in this case, the motion lacks any factual support showing good cause, and the record contains ample evidence for the Bureau to decide this case. Consistent with Commission precedent and 47 C.F.R. §§ 1.45(c) and 76.7(d), the Bureau should strike WACP’s request from the record, or in the alternative, deny it.²

The Request for Further Extension continues WACP’s campaign to drag this case out with unsupported assertions presented as “facts.” In its most recent pleading, WACP claims to have “enhanced” the station’s signal, then levels highly objectionable allegations against Armstrong and Armstrong’s Vice President of Engineering, Mr. Edgar E. Hassler, Jr., all with no factual support. Armstrong has undertaken rigorous engineering analysis and testing in this case,

¹ *Carriage Complaint of Western Pacific Broadcast, LLC, WACP, Atlantic City, New Jersey, CSR 8752-M, Request for Further Extension of Time* (filed Sept. 30, 2013) (“Request for Further Extension” or “Request”).

² 47 C.F.R. § 1.45(c) (replies to an opposition must be filed within a 5-days after the time for filing oppositions has expired); *id.* at § 76.7(d) (additional motions or pleadings by any party will not be accepted except upon a “showing of extraordinary circumstances.”)

all of which has been submitted and verified on the record. WACP has submitted nothing but excuses, innuendo, and half-baked arguments. To clear the record of WACP's objectionable and unsupported allegations, Armstrong moves to strike the Request for Further Extension.

Background. WACP elected must carry on Armstrong's system more than 15 months ago, claiming repeatedly that it delivered a good quality signal to Armstrong's headend. But during the entire intervening 15 months, WACP has never delivered a good quality signal to Armstrong's headend. Last April, Armstrong installed a preamplifier and filter that WACP's consulting engineer insisted would fix the station's problems.³ As explained in detail in Armstrong's Supplemental Opposition, the equipment only served to amplify the station's signal problems,⁴ and the picture quality continues to be awful.⁵ The Supplemental Opposition contains screen shots, digital signal tests reports, and other information demonstrating in detail that WACP fails to deliver a good quality signal. Consistent with the standards set forth in *Cablevision v. WRNN*,⁶ the Bureau should deny the Complaint.

Armstrong filed the Supplemental Opposition more than three months ago. WACP has had ample time to respond, including time to submit its own detailed engineering evidence. Instead, WACP has filed nothing except a string of extension requests.

³ *Carriage Complaint of Western Pacific Broadcast, LLC, WACP, Atlantic City, New Jersey*, CSR 8752-M, Supplemental Opposition, at 5 (filed June 28, 2013) ("Supplemental Opposition").

⁴ Supplemental Opposition at 6-11.

⁵ Supplemental Opposition, Supplemental Engineering Statement and Declaration of Edgar E. Hassler, Jr., Exhibits 1-4 (screen shots showing poor picture quality after installing equipment requested by WACP).

⁶ *Complaint of WRNN-TV Associates Limited Partnership against Cablevision Systems Corporation; Request for Carriage*, CSR-4774-M, Memorandum Opinion and Order, 13 FCC Rcd 12654 (CSB, 1998) (lead case involving denial of must carry request due to poor picture quality).

In the Request for Further Extension, WACP presents a series of completely unsupported claims, all in an attempt to deflect attention from the hard evidence on the record showing the station's poor signal quality. WACP's attempts to introduce new arguments and claims, the absence of support for their existing arguments, along with their statements' general unreliability, warrant the Bureau striking the pleading from the record, or in the alternative, denying the Request.

The Request for Further Extension should be stricken or denied because it fails to establish good cause for any extension.

WACP concedes that this case is about signal strength and signal quality.⁷ Still, WACP continues to duck all engineering evidence Armstrong has filed on the record, while submitting none of its own. Instead, WACP continues to seek relief based on entirely unsupported claims and assertions. Far from providing a clear and complete record, these unsubstantiated assertions only serve to muddy the issues. The Request for Further Extension does not contain the required showing of "extraordinary circumstances" to permit the filing of an additional pleading,⁸ and also introduces unreliable assertions consisting of hearsay and innuendo. The Commission generally excludes hearsay unless it contains an "indicia of reliability" and altogether excludes it in most circumstances.⁹ WACP's unverified claims, including those based entirely on hearsay

⁷ Request for Further Extension at 1.

⁸ See 47 C.F.R. § 76.7(d).

⁹ *Applications of SHAW COMMUNICATIONS, INC. For a New FM Translator Station at Berlin, New Hampshire, Order on Reconsideration*, File No. BNPFT-20030825AML, 27 FCC Rcd 6995 (2012) ("[w]hile we may consider hearsay evidence if it contains indicia of reliability, vague hearsay statements attributed to unidentified 'Broadcast Engineers' do not possess such indicia"), citing *Echostar Communs. Corp. v. FCC*, 292 F.3d 749, 753 (D.C. Cir. 2002); Letter from Peter H. Doyle, Chief, Audio Division, FCC to Counsel, *NCE Reserved Allotment Group 29*, File No. BNPED-20100224AAV, etc., 27 FCC Rcd 12296, 12301 (2012) ("Allegations consisting of generalizations and hearsay are not sufficient to satisfy the specificity requirements of Section 309(d) or the Commission's rules").

statements of an unattributed “consulting engineer,” should be stricken from the record. In the alternative, the Bureau should deny the Request.

The Bureau must reject the Request for Further Extension because it presents only unsupported and inaccurate claims and assertions, falling far short of any standard of good cause.

The Request for Further Extension makes three main assertions, relying solely on unsupported and inaccurate claims and assertions. We address these in sequence below.

1. WACP’s alleged installation of new exciters has not improved the station’s signal at Armstrong’s headend.

In its Ninth Motion for an Extension of Time to Reply, WACP claimed that the station’s transmitter suffered from “unstable” exciters and that repairs to the exciters were pending.¹⁰ Consistent with WACP’s approach to this case, that Motion contained no engineering verification of the claim, no engineering verification that the “unstable exciter” related to the signal problems at Armstrong’s headend, and no engineering verification that whatever the station is planning to do with the “unstable exciter” would address the woefully inadequate signal quality delivered to Armstrong’s headend. WACP’s Reply to Armstrong’s Opposition to the Ninth Motion for Extension of Time to Reply similarly lacked any engineering verification of the claims alleged.¹¹

The Request for Further Extension continues WACP’s campaign of unsupported assertions regarding station engineering. WACP now claims that it has installed new exciters at

¹⁰ *Carriage Complaint of Western Pacific Broadcast, LLC, WACP, Atlantic City, New Jersey, CSR 8752-M, Motion for Extension of Time to Reply to Opposition to Petition for Special Relief by Order of Carriage, at 2* (filed Aug. 30, 2013) (“Ninth Motion for Extension of Time to Reply”).

¹¹ *Carriage Complaint of Western Pacific Broadcast, LLC, WACP, Atlantic City, New Jersey, CSR 8752-M, Initial Reply to Opposition to Extension of Time* (filed Sept. 13, 2013).

WACP's transmitter "which have enhanced the station's signal, improving performance."¹² Signal "enhancement" and signal "performance" are conditions that could be verified through submission of engineering reports and analyses. But the pleading contains no engineering submission to support any claim that the station's signal has improved at Armstrong's headend.

As set forth in the attached Declaration of Edgar E. Hassler, Jr., the alleged exciter repairs have made no difference whatsoever. The Declaration states:

I have continued to monitor WACP's signal as delivered to our Oxford system headend. Even after the time when the station's lawyer says new exciters were installed, the picture quality continues to be grossly inadequate, with frequent tiling, freezing, and other distortions similar to those reported in my Supplemental Engineering Statement.¹³

WACP bears the burden of showing that the exciter repairs constitute "extraordinary circumstances" warranting further delay in this case.¹⁴ The station has failed to meet this burden.

2. Armstrong has cooperated with WACP and has not resisted any legitimate engineering efforts.

The Request for Further Extension attempts to paint Armstrong and Mr. Hassler as obstructionist, claiming:

Armstrong. . . has resisted Western Pacific's efforts to work further with Armstrong to conduct new tests to determine the cause and the remedy of the poor picture quality allegedly witnessed by Armstrong's engineer. This resistance has continued even though, as indicated on September 13th its Initial Reply to an opposition of Armstrong to a prior extension request, Western Pacific has installed new exciters at WACP which have enhanced the station's signal, improving performance. . . . This requires the cooperation of Armstrong which, since Western Pacific's consulting engineer returned to Vancouver and thereafter to the present, has not been forthcoming.¹⁵

¹² Request for Further Extension at 2.

¹³ Attachment, Declaration of Edgar E. Hassler, Jr., ¶ 2 ("Hassler Declaration").

¹⁴ See 47 C.F.R. § 76.7(d).

¹⁵ Request for Further Extension at 2.

These allegations are as inaccurate as they are offensive to Armstrong. As set forth in the

Hassler Declaration:

WACP's claims that I have been uncooperative or have resisted their engineering efforts are inaccurate. The truth is that WACP's engineering efforts have been minimal and sporadic at best. I first heard from their consulting engineer in January 2013. That communication ultimately led to installation on April 17, 2013 of a preamp and bandpass filter selected by WACP. As reported in my Supplemental Engineering Statement, that equipment did not improve the quality of the signal. The signal quality remained poor and unacceptable for retransmission on our cable system. After April 2013, five months elapsed before WACP requested further testing. In the interim, we submitted detailed engineering data showing the poor quality of the signal. WACP never provided any substantive response to that data. By the time WACP inquired about further testing, Armstrong was proceeding with a market modification petition. As I communicated to WACP's engineer, it seemed most appropriate to defer the time and expense of further testing until the FCC made a decision on that Petition.¹⁶

To cleanse the record of WACP's spurious claims concerning Armstrong and Mr. Hassler, the Bureau should strike the Request for Further Extension.

3. Mr. Hassler has never seen a consistently good quality picture from WACP.

Referring to the April 17 testing, the Request for Further Extension claims "Armstrong's engineer and Western Pacific's consulting engineer saw that the power level was above the minimum required for a good quality signal and saw a good picture on the monitor."¹⁷ Notably, this assertion is not supported by a declaration or affidavit from any person with personal knowledge. It is pure hearsay with no indicia of reliability, and should be stricken.¹⁸

As stated by Mr. Hassler,

There is no factual basis for any claim that I have seen a good picture from WACP. I have monitored WACP's signal periodically since first receiving their must carry request in 2012. I have never seen a consistent good quality picture from the station. As submitted in my Supplemental Engineering Statement, WACP's picture consistently suffers from substantial distortion, artifacts, and, at times, nearly complete picture loss.

¹⁶ Hassler Declaration, ¶ 3.

¹⁷ Request for Further Extension at 2.

¹⁸ See *supra* note 9.

This has continued from April's testing through today, even after WACP has purportedly fixed the transmitter's exciters.¹⁹

Armstrong's Supplemental Opposition contained solid engineering evidence and analysis concerning the poor picture quality of WACP's signal.²⁰ WACP has chosen not to submit any engineering response to contradict Armstrong, and the Bureau should decide the case on the record now before it.

Commission standards for evaluating extension requests support denial of the extension. Precedent supports denial of WACP's Motion. WACP has not provided any indication of good cause that would warrant granting its request. For example, nowhere in the Motion does WACP explain why engineering evidence "could not have been discovered in the usual time periods and rounds of pleadings."²¹ WACP also does not explain why this particular situation presents any unusually complex broadcast engineering problems that it would take over 15 months to solve.²² Finally, at this point, grant of the Motion will not increase the likelihood of an amicable resolution.²³ Armstrong has spent far too much time dealing with this case already.

¹⁹ Hassler Declaration, ¶ 4.

²⁰ Supplemental Opposition, Engineering Statement at 3-11 & Exhibit 1.

²¹ See *Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates Petition for Determination of Effective Competition in Six Blaine, Minnesota Franchise Areas*, CSR 8008-E, Memorandum Opinion and Order, 28 FCC Rcd 5508 ¶ 1 n.4 (2013) (granting extra time because it "made possible 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").

²² See *The County of New Hanover, North Carolina; Petition For Recertification to Regulate the Basic Cable Service Rates of Charter Communications, Inc., d/b/a/ Falcon Cable Media, etc.*, CSR 6411-R; CSR 8096-E, Memorandum Opinion and Order, 24 FCC Rcd 10130 ¶ 9 (2009) ("Extensions of time are not routinely granted, but these proceedings have required each party to make factual investigations of unusual complexity").

²³ See *Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates, etc.*, CSR 7852-E, Memorandum Opinion and Order, 24 FCC Rcd 4902 ¶ 2 (2009) (granting request

Conclusion and requested relief. WACP’s tenth request to extend the time to file its reply fails to satisfy any applicable standard of good cause shown. WACP has had ample time to submit engineering and operational information on the record to attempt to explain its poor quality signal and a remedy for it. WACP has not done so. In contrast, Armstrong has submitted detailed engineering evidence showing how WACP fails to deliver a good quality signal consistent with the standards set forth in *Cablevision v. WRNN*.

The Request for Further Extension clutters the record with hearsay, innuendo, and unsupported allegations; it is nothing more than another attempt by WACP to delay denial of its complaint. The Bureau should not allow WACP to manipulate the Commission’s procedural rules with unsubstantiated assertions and inferences, and conclude that this case is now fully briefed. Armstrong respectfully request that the Media Bureau strike WACP’s Request for Further Extension from the record, or in the alternative, deny it, and promptly deny the underlying Complaint.

where “there is a reasonable likelihood that the parties can resolve [a] matter amicably, and that a brief extension will assist in these endeavors”).

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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October 21, 2013

Attorneys for Armstrong Utilities, Inc.

Certificate of Service

I, Alma Hoxha, paralegal with Cinnamon Mueller, certify that copies of the foregoing Opposition were delivered by me to the United States Postal Service on October 21, 2013 to be delivered to the persons listed below for delivery via First Class Mail, postage prepaid, and email.



Alma Hoxha

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Attorney for Western Pacific Broadcast, LLC

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**DECLARATION OF
EDGAR E. HASSLER, JR.**

I submit this Declaration in support of our Opposition to and Motion to Strike WACP's Tenth Request for Extension of Time. I make this Declaration based on personal knowledge, a review of company records, and a review of public information concerning WACP programming. I can testify if necessary as to the truth of the matters asserted.

Professional Background. I am the Vice President of Engineering for Armstrong Utilities, Inc. I have worked for the company in various engineering capacities for 47 years. My current responsibilities include engineering oversight of Armstrong's multiple headends and over 11,000 miles of distribution plant and associated electronics.

I have been engaged in analyzing broadcast signal carriage on Armstrong's cable systems for my entire career with the company. I have evaluated carriage issues related to at least 200 different broadcast stations, and have analyzed signal strength and other issues in at least 50 must carry situations. I am experienced in the Commission's signal testing requirements for stations seeking must carry.

I hold a Bachelor of Science degree in Electrical Engineering and a certificate in Electronic Communications from the Electronics Institute of Pittsburgh. I am a member of the Society of Cable Television Engineers. I am also an FCC licensee, holding a General Class Radiotelephone license with ship radar endorsement, and an amateur radio extra class license, call sign KE3H.

Factual statements in support of the Opposition.

1. WACP's Request for Further Extension contains representations concerning my communication and conduct that are either inaccurate or untrue.¹
2. In its Request, WACP states that it has installed new exciters at WACP's transmitter "which of enhanced the station's signal, improving performance."² Concerning the signal received at Armstrong's headend, this statement is inaccurate. I have continued to monitor WACP's signal as delivered to our Oxford system headend. Even after the time when the station's lawyer says new exciters were installed, the picture quality continues to be grossly inadequate, with frequent tiling, freezing, and other distortions similar to those reported in my Supplemental Engineering Statement.
3. In its Request, WACP claims that I have "resisted Western Pacific's efforts to work further with Armstrong to conduct new tests to determine the cause and the remedy of the poor picture quality."³ WACP's claims that I have been uncooperative or have resisted their engineering efforts are inaccurate. The truth is their engineering efforts have been

¹ See *Carriage Complaint of Western Pacific Broadcast, LLC, WACP, Atlantic City, New Jersey, CSR 8752-M, Request for Further Extension of Time*, at 2 (filed Sept. 30, 2013) ("Request for Further Extension" or "Request")

² *Id.* at 2.

³ *Id.* at 2.

minimal and sporadic at best. I first heard from their consulting engineer in January 2013. That communication ultimately led to installation on April 17, 2013 of a preamp and bandpass filter selected by WACP. As reported in my Supplemental Engineering Statement, that equipment did not improve the quality of the signal.⁴ The signal quality remained poor and unacceptable for retransmission on our cable system. After April 2013, five months elapsed before WACP requested further testing. In the interim, we submitted detailed engineering data showing the poor quality of the signal. WACP never provided any substantive response to that data. By the time WACP inquired about further testing, Armstrong was proceeding with a market modification petition. As I communicated to WACP's engineer, it seemed most appropriate to defer the time and expense of further testing until the FCC made a decision on that Petition.

4. In its Request, WACP claims that I have seen a good picture from WACP on our monitor. There is no factual basis for any claim that I have seen a good picture from WACP. I have monitored WACP's signal periodically since first receiving their must carry request in 2012. I have never seen a consistent good quality picture from the station. As submitted in my Supplemental Engineering Statement, WACP's picture consistently suffers from substantial distortion, artifacts, and, at times, nearly complete picture loss.⁵ This has continued from April's testing through today, even after WACP has purportedly fixed the transmitter's exciters.

⁴ *Carriage Complaint of Western Pacific Broadcast, LLC, WACP, Atlantic City, New Jersey, CSR 8752-M, Supplemental Opposition, Supplemental Engineering Statement and Declaration of Edgar E. Hassler, Jr., at 4-5 (filed June 28, 2013) ("Supplemental Engineering Statement")*

⁵ *Id.*

Certification

I have read this Declaration and the Opposition to which it is attached. I certify that to the best of my knowledge, information and belief formed after reasonable inquiry, both submissions are well grounded in fact, and are not interposed for any improper purpose.

Respectfully submitted,

A handwritten signature in blue ink that reads "Edgar E. Hassler, Jr." with a stylized flourish at the end.

Edgar E. Hassler, Jr.
Vice President of Engineering
Armstrong Utilities, Inc.
October 18, 2013