ORIGINAL

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

| | | |
|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| Buckeye Cablevision | ) | |
| | ) | |
| Complainant | ) | |
| | ) | |
| v. | ) | MB Docket No. 12-1; 14-33 |
| | ) | CSR No. 8874C |
| | ) | |
| Sinclair Broadcast Group, Inc. | ) | |
| | ) | |
| Defendant | ) | |

Accepted/Filed
MAR 27 2014
FCC Office of the Secretary

To: The Commission

**LIMITED RESPONSE TO NEW ARGUMENT**

Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby submits its Limited Response to New Argument ("Limited Response"), which addresses an assertion first made in the March 26, 2014, Reply of Buckeye Cablevision ("Buckeye"). In its Reply, Buckeye claims that Sinclair's March 13, 2014, Answer to Complaint was untimely, and should be dismissed without consideration. This Limited Response is submitted for the sole purpose of responding to that incorrect claim.

Buckeye argues that answers to complaints "must be filed within 20 days of service of the complaint," citing Section 76.7(b)(2) of the Commission's Rules. It does not, however, provide the correct wording for that provision. It states, in full: "The answer shall be filed within 20 days of service of the complaint, unless another period is set forth in the relevant rule section." 47 C.F.R. ¶ 76.7(b)(ii). Buckeye ignores the fact that this proceeding is being treated as a special relief petition by the Commission, and appeared on a Public Notice entitled "Special

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Relief and Show Cause Petitions" on February 21, 2014. That Public Notice listed the Buckeye pleading, and assigned it a CSR-C file number, which, according to the Public Notice, means "cable special relief" – "retransmission consent." See Attachment A.

Under Section 76.7(b)(1) of the Commission's Rules, "interested parties may submit comments or oppositions within twenty (20) days after the date of public notice of the filing of such a petition." 47 C.F.R. ¶ 76.7(b)(1). Because the public notice was issued on February 21, 2014, the due date was March 13, 2014 – the very day that Sinclair submitted its Answer to Complaint. This more specific provision overrides Section 76.7(b)(ii), which would have governed had the Commission not recognized this as a retransmission consent special relief proceeding and issued a public notice to that effect.

Even if, contrary to Sinclair's analysis, Section 76.7(b)(1) does not govern, Sinclair's Answer to Complaint was timely under Section 76.7(b)(2)(ii). Buckeye's Complaint was not complete until it filed its Supplement on February 20, 2014.[1] That document was not served on Sinclair – even using the date of mailing as the date of service – until February 21, 2014.[2]

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1 The fact that the Supplement was part and parcel of the Complaint is evidenced by the fact that a portion of Buckeye's argument is devoted to restating the assertions set forth in the Supplement and again requesting expedited action in this matter.

2 Buckeye's Supplement was not transmitted electronically to Sinclair or its counsel, and counsel learned of that filing only on February 21, 2014, when a copy was received from a reporter seeking a comment on the filing. For reasons unknown to Sinclair, the Supplement was not mailed to Sinclair or its counsel until February 21. See Attachment B, a copy of the front of the envelope in which the Supplement was received by counsel for Sinclair the following week, which bears the postmarked date of February 21, 2014. Buckeye also asserts in its Reply that its Complaint "was served on Sinclair by electronic and U.S. Mail on February 18, 2014." That assertion is incorrect. First, the electronic courtesy copy did not constitute "service" because the Commission's Rules do not contemplate email service, and, moreover, the copy sent to counsel for Sinclair well after close of business was redacted and not a full copy of what was submitted to the Commission. Second, the pleading was not mailed to counsel for Sinclair on February 18, as certified, but in fact was mailed on the next day, February 19, 2014. See Attachment C.

Sinclair believes that the marketplace should be allowed to work in this case, and did not bring this issue up in its Answer so as to avoid entangling this matter in procedural arguments. Even now, it does not mention this to seek sanctions against Buckeye, but only to demonstrate that, even under Buckeye's theory of the case, Sinclair's document was timely filed based on the actual date of mailing of the Supplement. Buckeye's attempt to avoid consideration of the merits is just another example of the silly lengths to which Buckeye will go to obtain a one-sided, non-market deal with Sinclair.

Sinclair's Answer was submitted on March 13, 2014, 20 days after February 21, and thus was timely in any event.3

Finally, Buckeye does not, and cannot show that it was harmed in any way by the alleged late filing. It was sent a courtesy copy of the Sinclair Answer to Complaint by email on May 13, 2014 so it had the document well in advance of the date it would have received it had Sinclair served only by mail, which would have complied with Commission Rules. Buckeye had ample time and opportunity to respond to each and every point made by Sinclair. Indeed, it took thirteen days to respond to Sinclair's Answer to Complaint, submitting its Reply on March 26, 2014.[4]

For the reasons set forth herein, Buckeye's frivolous attempt to have the Sinclair Answer to Complaint to be returned without consideration should be rejected.

Respectfully submitted,

**Sinclair Broadcast Group, Inc.**

By: _____
Clifford M. Harrington
Paul A. Cicelski

Its Attorneys

PILLSBURY WINTHROP SHAW PITTMAN LLP
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Facsimile: (202) 663-8007
Dated: March 27, 2014

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3 Although undersigned Counsel understands that the Commission's Rules do not permit reliance on informal advice from Commission staff, we have been repeatedly advised over the years by FCC staff that the 20 day period to respond to a cable petition runs from the date of Public Notice.

4 Buckeye appears to have relied on the ten day reply period for responses in cable special relief proceedings, Section 76.7(c)(3) and the general rule giving an additional three days where a document is "in fact served by mail." Sinclair provided a copy of its Reply to Answer to Buckeye's counsel on March 13, 2014. See Attachment D. If such a courtesy is sufficient to effect service, as Buckeye argues in its Reply, then the Reply was not entitled to the additional three days under Section 1.4(h), and is itself untimely.

# ATTACHMENT A

# PUBLIC NOTICE

News media information 202 / 418-0500
TTY 202 / 418-2555
Internet: http://www.fcc.gov
ftp.fcc.gov

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

REPORT NO: 0411 SPECIAL RELIEF AND SHOW CAUSE PETITIONS February 21, 2014

Portions of this Public Notice have been produced by the Media Bureau's computer-based Data Management systems.
This Public Notice is intended to list only special relief requests, petitions for order to show cause and related petitions for reconsideration or applications for review. CSR (cable special relief) petitions and CSC (cable show cause) petitions refer to cable-related matters pursuant to Part 76. The newly-designated BSR (broadcast special relief) petitions refer to certain non-application-related broadcast matters pursuant to Part 73.

Parties seeking special relief pursuant to Part 76 are advised that such requests must be initiated through the special relief provisions of Section 76.7 of the Rules. Many of these filings are subject to the pleading cycle rules set forth in Section 76.7, while others have their own pleading cycle relative to the particular rule involved. For BSR petitions filed pursuant to Part 73, the pleading cycle will be the same as that mandated by Section 76.7 unless stated otherwise.

Please note that petitions for reconsideration and applications for review are listed for informational purposes only. The applicable pleading cycles for these types of petitions are found in Sections 1.106 and 1.115 of the Commission's rules, respectively.

Files containing these petitions can be reviewed in the Commissions Reference Information Center, CY-Level, 445 12th Street, SW Washington, DC 20554. The letter code following a CSR Number refers to the particular subject of the petition. Those currently in use are: A – ADI/DMA; M – must carry; E – effective competition; C – retransmission consent; P – program access; R – rate regulation; F – rate freeze; L – commercial leased access; Z – technical; S – significantly viewed; N – nonduplication/syndicated exclusivity/sports deletion; D – small system definition; O – otard; and X – cross ownership. If no letter appears after the CSR number, the petition is considered to be in the miscellaneous category. CSC and BSR petitions do not have letter code designations.

It is requested that all responses or statements refer to the CSR file number assigned to the petition.

For further information about this Public Notice contact the Media Bureau at (202) 418-7200

| Docket No. | CSR Number | Petitioner | Respondent | Special Relief Request Communities |
|---|---|---|---|---|
| 14-30 | CSR-8871-E | Comcast Cable Communications, LLC | | Beekman, Brewster, Carmel, Kent, Patterson, Pawling Town & Pawling Village NY |
| 14-31 | CSR-8872-M | Cross Hill Communications, LLC (WYCX-CD) | Duncan Cable TV | Wilmington, VT |
| 14-32 | CSR-8873-E | Cox Communications California, LLC | | Santa Barbara City, Santa Barbara County & Goleta, CA |
| 14-33 | CSR-8874-C | Buckeye Cablevision, Inc. | Sinclair Broadcast Group | Toledo, OH |

**-FCC-**

# ATTACHMENT B

UNITED STATES POSTAGE
PITNEY BOWES
02 1P $ 001.19⁰
0003171579 FEB 21 2014
MAILED FROM ZIP CODE 20110

First Class Mail

First Class Mail

Cooley LLP

1299 Pennsylvania Ave. N.W.
Suite 700
Washington, DC 20004

Clifford M. Harrington, Esquire
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1122

# ATTACHMENT C

Priority Mail
ComBasPrice

UNITED STATES POSTAGE
PITNEY BOWES
02 1P $ 005.32⁰
0003171579 FEB 19 2014
MAILED FROM ZIP CODE 20190

**First Class Mail**

First Class Mail

Cooley LLP

1299 Pennsylvania Ave. N.W.
Suite 700
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# ATTACHMENT D

## Colish, Julia L.

**From:** Deckelboim, Carly A.
**Sent:** Thursday, March 13, 2014 6:28 PM
**To:** 'mdbasile@cooley.com'; jrademacher@cooley.com
**Cc:** Cicelski, Paul A.
**Subject:** Sinclair Answer to Buckeye Complaint
**Attachments:** Sinclair Answer to Buckeye Complaint - FILED 3-13-14.pdf

Hello,

Please find attached a copy of Sinclair's Answer to Buckeye's Complaint, which was filed today in ECFS.

Regards,
Carly A. Deckelboim

**Carly A. Deckelboim** | Associate
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122
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* Not admitted to practice law in the District of Columbia. Supervised by members of the District of Columbia Bar.

ABU DHABI HOUSTON LONDON LOS ANGELES NASHVILLE OPERATIONS NEW YORK
NORTHERN VIRGINIA SACRAMENTO SAN DIEGO SAN DIEGO NORTH COUNTY SAN FRANCISCO
SHANGHAI SILICON VALLEY TOKYO WASHINGTON, DC

pillsbury

## CERTIFICATE OF SERVICE

I, Julia Colish, a legal secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP hereby certify that copies of the foregoing "**LIMITED RESPONSE TO NEW ARGUMENT**" was served as specified below on the 27th day of March 2014 to the following:

Steven Broeckaert**
Media Bureau
Federal Communications Commission
445 12th Street, S.W
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Washington, D.C. 20554

Mary Beth Murphy**
Media Bureau
Division Chief, Policy Division
Federal Communications Commission
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*Counsel for Buckeye Cablevision*

Julia Colish

Julia Colish

* Via Electronic Mail and U.S. Mail
** Via Electronic Mail and Hand Delivery