Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Bellizzi Broadcasting Network, Inc.	)	CSR-8837-M
Station WEYW-LP, Key West, Florida	)	MB Docket No. 13-244
	)	
Facility ID No. 130765	)	

To: Office of the Secretary
Attn: Chief, Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Comcast Cable Communications, LLC, on behalf of its subsidiaries and affiliates ("Comcast" or the "Company"), hereby opposes the Petition for Reconsideration ("Petition") filed by Bellizzi Broadcasting Network, Inc. ("Bellizzi"), licensee of analog low power television station WEYW-LP (Channel 19), Key West, Florida ("WEYW" or the "Station") in the above-captioned proceeding. Bellizzi seeks reversal of the Media Bureau's (the "Bureau") Order in *Bellizzi Broadcasting Network, Inc.*,[1] which denied the Station's must carry complaint (the "Complaint") involving the cable communities served by Comcast's Key West, Florida cable system. The Petition should be denied because it does not advance new arguments, but rather, echoes arguments previously considered and rejected below. The Petition otherwise fails to provide any legal or factual basis for the Bureau to overturn its well-reasoned determination that WEYW is not a "qualified" low power television ("LPTV") station for must carry purposes under Section 614(h)(2) of the

[1] 28 FCC Rcd. 16761 (2013) (the "Order").

Communications Act of 1934, as amended (the "Act"), and the Commission's implementing rules.[2]

I. THE PETITION FAILS TO PROVIDE ANY BASIS FOR REVERSAL

The Petition should be denied because it fails to satisfy the required threshold for reconsideration. The Bureau has explained the Commission's long-standing policy under Section 1.106(c) of the Rules,[3] against petitions for reconsideration that merely repeat arguments previously made and rejected:

> Reconsideration is appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond. Reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken.[4]

Bellizzi's Petition does not identify any material error or omission in the Bureau's Order, nor does it offer any additional facts or evidence not previously before the Bureau.

A. The Bureau Properly Denied WEYW Must Carry Status.

The Act requires LPTV stations such as WEYW to meet a specific set of criteria to qualify for must carry status.[5] An LPTV station must meet each of the criteria to be a "qualified" low power television station. At issue in this case is the criterion set forth in Section 614(h)(2)(F), which clearly provides that LPTV stations are eligible for must carry "*only* if . . . there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the

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[2] *See* 47 U.S.C. § 534(h)(2). *See also* 47 C.F.R. § 76.55(d).

[3] *See* 47 C.F.R. § 1.106(c).

[4] *Lankenau Small Media Network v. Ohio Cablevision Network*, 13 FCC Rcd. 4497, at ¶ 13 (1998) (Footnotes omitted).

[5] *See* 47 U.S.C. § 534(h)(2). *See also* 47 C.F.R. § 76.55(d).

cable system."[6] Bellizzi does not dispute that there are two full power broadcast television stations licensed to Key West, Florida (WGEN-TV and WSBS-TV).[7] Nor does it dispute that Key West is located in Monroe County, Florida as is Comcast's Key West cable system and each of the communities served by that system.[8] Accordingly, the Order correctly found that WEYW is not a "qualified" LPTV.

The Order succinctly and accurately summarized why WEYW is not a "qualified" low power television station:

> Section 76.55(d)(6) of our rules directly implements the mandate of Section 614(h)(2)(F) of the Cable Act, pursuant to which a low power station can only qualify for mandatory carriage if there is no full power television station licensed to its community or political subdivision. WEYW is licensed to the same community, Key West, Florida, as full power stations WGEN and WSBS. Accordingly, because a low power television station must meet each of the Act's six criteria to be considered "qualified," WEYW's failure to meet this one factor is fatal to its request for mandatory carriage.[9]

Despite Bellizzi's claims, there is simply no credible basis for the Bureau to have reached an alternative conclusion.

B. Bellizzi is Essentially Asking the Bureau to Re-Write the Governing Statute.

Bellizzi continues to advance the argument that the Commission must ignore the clear statutory directive that LPTV stations do not qualify for must carry in communities already served by a full power station, on the grounds that WEYW's programming is "more local" than that of full power stations WGEN-TV and WSBS-TV, which broadcast Spanish-language programming.

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[6] 47 U.S.C. § 534(h)(2)(F) (emphasis added); *see also* 47 C.F.R. § 76.55(d)(6).

[7] *See* Petition at 1 ("The relevant facts here are not in dispute.").

[8] *Id.*

[9] Order at ¶ 6.

There are, however, no comparative content standards included within Section 614(h)(2)(F) of the Act. Congress deliberately and unequivocally predicated "must carry" status for LPTV stations on the absence of any local full power stations. Congress could have required a comparative content analysis, which would require carriage of LPTV stations with local content deemed superior to that of local full power stations, but it did not. Indeed, that would be a very different statute than the one actually adopted by Congress. The Bureau correctly recognized that the comparative programming content analysis advocated by Bellizzi has no relevance under the governing statute.[10]

Despite its protestations to the contrary, Bellizzi is essentially arguing that the Commission should waive the requirements of Section 614(h)(2)(F) of the Act. There is, of course, no waiver mechanism in the portion of the must carry statute pertaining to LPTV stations. If Congress had intended there to be such a waiver mechanism, it certainly had the opportunity to create one and chose not to do so.[11]

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[10] *See* Order at 5-6. As noted in Comcast's Opposition below, to permit the content analysis advocated by Bellizzi would be to add constitutional error on top of statutory error. *See* Opposition at n. 7. The Supreme Court determined that cable operators are protected by the First Amendment. "There can be no disagreement on an initial premise: *Cable programmers and cable operators* engage in and transmit speech, and they *are entitled to the protection of the speech and press provisions of the First Amendment.*" *Turner Broadcast. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) ("*Turner I*") (citation omitted; emphasis added). The Supreme Court expressly reserved judgment on the constitutionality of must carry for low power television because it "appears to single out certain low-power broadcasters for special benefits on the basis of content." *Id.* at 644 n.6. Here, Bellizzi continues to press for a detailed FCC evaluation of content available on low power WEYW as compared to that available on the two full power stations licensed to Key West, *see* Petition at 5-8, which would be decidedly inconsistent with the Supreme Court's reliance on *content neutrality* as a basis for upholding must carry for full power broadcasters. *See Turner I*, 512 U.S. at 644; *see also Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 217-218 (1997)..

[11] Indeed, Congress created such a "waiver" mechanism in the context of the must carry

In challenging the Bureau's Order, Bellizzi again relies on *Gardner v. FCC*,[12] where the court determined that the Commission was required to consider a late filed petition for reconsideration in "extraordinary circumstances" – effectively waiving the statutory deadline for such filings.[13] But the Bureau has already considered and rejected this narrow ruling as inapplicable. The Bureau distinguished the facts pertaining to the procedural issues in *Gardner* from the substantive issues in the instant case, stating:

> Petitioner's argument fails to bridge the qualitative differences between disregarding the lateness of a petition, particularly when the Commission's mistake is a causal factor of that lateness, and a low power station's failing to meet requirements for it to be classified as a "qualified" station, a definitional failure in no way caused by Commission action or inaction.[14]

In short, the Bureau correctly found that *Gardner* is not applicable in this case.[15]

Bellizzi's desire to gain mandatory carriage rights for WEYW on Comcast's Key West cable system cannot be reconciled with the unambiguous requirements for a "qualified" low power television station set forth in Section 614(h)(2) of the Act.[16]

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rules assigning full power commercial stations to particular television markets. *See* 47 U.S.C. § 534(h)(1)(C).

[12] 530 F.2d 1086 (D.C. Cir 1976).

[13] *See* Petition at 3-5.

[14] Order at n. 14.

[15] Bellizzi erroneously relies on a single case -- *Communications Investment Corp. v. FCC*, 641 F.2d 954 (D.C. Cir. 1981) – to support its contention that the Bureau erred in "cavalierly" distinguishing *Gardner* from the current case. In *Communications Investment Corp.*, the court ruled that the Commission may not disregard its own precedent on the basis of "trivial" variations from case to case. *See Communications Investment Corp.* at 976. In this case, the Bureau did not disregard precedent in a "cavalier" manner, as Bellizzi contends. To the contrary, the Bureau highlighted "qualitative" differences between the limited procedural ruling in *Gardner* and WEYW's failure to meet the core substantive requirements of Section 614(h)(2)(F) of the Act.

[16] *See* 47 U.S.C. § 534(h)(2). *See also* 47 C.F.R. § 76.55(d).

II. CONCLUSION

For the foregoing reasons, Comcast respectfully requests that the Commission issue an order denying Bellizzi's Petition for Reconsideration, as WEYW plainly is not a "qualified" low power television broadcast station.

Respectfully submitted,

Comcast Cable Communications, LLC
on behalf of its subsidiaries and affiliates

By: _____

Wesley R. Heppler
Steven J. Horvitz
Frederick W. Giroux
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W. Suite 800
Washington, D.C. 20006
(202) 973-4200

Brian A. Rankin
Catherine Fox
COMCAST CORPORATION
One Comcast Center
Philadelphia, PA 19103-2838
(215) 286-5237

April 3, 2014

Its Attorneys

CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)

The below-signed signatory has read the foregoing Opposition to Petition for Reconsideration, and to the best of my knowledge, information and belief formed after reasonable inquiry, it 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 is not interposed for any improper purpose.

Respectfully submitted,

Comcast Cable Communications, LLC
on behalf of its subsidiaries and affiliates

By: _____

Frederick W. Giroux
DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, DC 20006
(202) 973-4200

April 3, 2014

Its Attorney

CERTIFICATE OF SERVICE

I, Deborah Williams, do hereby certify on this 3rd day of April, 2014 that a true and correct copy of the foregoing "Opposition to Petition for Reconsideration" has been sent via U.S. mail, postage prepaid to the following:

William Lake, Chief, Media Bureau
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Steven A. Broeckaert, Esq.
Senior Deputy, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Florida Department of State
Cable and/or Video Franchising
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, Florida 32301

Monroe County Administrator's Office
1100 Simonton Street
Suite 205
Key West, FL 33040

Lee J. Peltzman
Shainis & Peltzman, Chartered
1850 M Street, N.W., Suite 240
Washington, D.C. 20036

Deborah Williams
Deborah Williams