



Federal Communications Commission
Washington, D.C. 20554

March 12, 2007

DA 07-1264
Released: March 13, 2007

Jorge L. Bauermeister
Counsel for Choice Cable T.V.
VIG Tower
1225 Ponce de Leon Ave.
Suite 1505
Santurce, PR 00907

Re: CSR No. 7059-C

Dear Mr. Bauermeister:

WLII/WSUR Licensee Partnership, G.P. ("WLII/WSUR") filed an Emergency Petition Seeking Enforcement Order for Violation of Sections 76.65, 76.1601, and 76.1603 of the Commission's Rules and for Immediate Injunctive Relief ("Petition") against your client, Choice Cable T.V. ("Choice").¹ Among other allegations, WLII/WSUR asserts that Choice has failed to negotiate in good faith in the context of retransmission consent negotiations in violation of the Commission's rules.

Section 76.65 of the Commission's rules imposes a duty on television broadcast stations and multi-channel video programming distributors to negotiate in good faith with respect to retransmission consent.² Among the actions or practices that constitute a violation of this duty is the refusal of a party to meet at reasonable times or locations or acting in a manner that delays negotiations,³ or refusal by a party to put forth more than a single unilateral proposal.⁴

The record here shows that WLII-TV along with its "booster" stations WSUR-TV and WORA-TV,⁵ elected retransmission consent for the 2006-2008 election period. All three stations entered into extended negotiations with Choice while the cable system carried the WLII programming on an interim basis. These negotiations continued from approximately September 2005 until August 2006 when Choice abruptly halted negotiations because, as it stated, it had begun carriage of WLII's programming through arrangements with WORA. According to WLII/WSUR, Choice did not notify subscribers or the franchise authority that it had replaced WLII's signal with that of WORA.⁶ WLII points out that Choice has failed to provide a copy of a valid retransmission consent agreement authorizing it to carry WORA.⁷ In addition, it offers evidence from WORA that no contract with Choice exists.⁸ WLII also complains that Choice maintained the single unilateral position that it would not pay for WLII programming despite

¹ 47 C.F.R. §§ 76.65, 76.1601, and 76.1603.

² 47 C.F.R. §76.65.

³ 47 C.F.R. §76.65(b)(1)(iii).

⁴ 47 C.F.R. §76.65(b)(1)(iv).

⁵ WLII explains that both WSUR-TV, a co-owned station, and WORA-TV, a third party owned station, carry WLII's programming to viewers on the southern and western portions of the island. Petition at 4.

⁶ Petition at 6-7.

⁷ WLII Reply at 21.

⁸ WLII Reply at 20-25; Exhibits 3-6. WLII/WSUR asserts that Choice is carrying WLII/WSUR programming without authority by carrying the WORA signal. We will address these allegations and the allegations of violation of 76.1601 and 76.1603 in a subsequent order.

Choice's apparent willingness to consider a fee per subscriber arrangement during part of the negotiations.⁹ WLII contends that Choice was merely prolonging negotiations while trying to obtain WLII programming for free from WORA.¹⁰ Choice in response argues that it always negotiated in good faith and that it did not delay the negotiations.¹¹ Choice also admits that it refused to offer cash payment for carriage of WLII, but did offer alternative options for compensation.¹²

Given the totality of the circumstances in this proceeding, we find that Choice violated its duty to negotiate in good faith. Carriage without retransmission consent is a violation of Section 325(b) of the Communications Act, 47 U.S.C. §325(b), and Section 76.64 of the Commission's Rules, 47 C.F.R. §76.64. Because Choice has provided no evidence of a valid retransmission consent agreement with WORA, we believe that it breached its duty to negotiate in good faith with WLII/WSUR.

Choice is hereby ordered to contact representatives of WLII/WSUR within 10 days of the date of this letter to resume negotiations for carriage of WLII and to negotiate in good faith for such carriage. We require Choice to update the Commission every 30 days on the status of the negotiations. In the event of an impasse, we note that both parties could agree to final binding arbitration by the Media Bureau. If you have any questions about this matter, please contact Rosalee Chiara of my staff at 202-418-0754.

Sincerely,

Steven Broeckaert
Deputy Chief, Policy Division
Media Bureau

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⁹ Petition at 10-13.

¹⁰ *Id.*

¹¹ Answer at 9.

¹² Answer at 9-10.