



Federal Communications Commission
Washington, D.C. 20554

September 17, 2014

DA 14-1349

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In re: Emergency Petition for Injunction Prohibiting Carriage in Violation of the
Commission's Rules
CSR-8382-C

Dear Ms. Ryder and Messrs. Thatch, Brill, Barker, and Murchison:

By this letter, we dismiss the Petition initiating the above-referenced proceeding and terminate the proceeding.

On December 28, 2010, Nexstar Broadcasting, Inc. ("Nexstar"), licensee of television station WBRE-TV, and Mission Broadcasting, Inc. ("Mission"), licensee of television station WUTR, filed a Petition asking the Commission to prohibit Time Warner Cable ("TWC") from carrying

WBRE-TV and WUTR on certain cable systems.¹ Nexstar and Mission alleged that TWC carried WBRE-TV and WUTR outside of their local markets as a replacement for two stations with the same network affiliations that TWC deleted during a retransmission consent dispute with third parties.² TWC responded that its importation of the distant signals did not violate any FCC rule and was authorized under the parties' retransmission consent agreement.³ In addition to its response on the merits of the Petition, TWC stated that the requested relief is "now moot, as TWC has reached a new retransmission consent agreement with the local stations and has ceased importation of Petitioners' signals."⁴ While Nexstar and Mission acknowledge that injunctive remedies are no longer necessary, they still ask the Commission to confirm that TWC violated the Commission's notice requirements, and they amend their Petition to request a declaratory ruling on the notice issue.⁵ The Commission's rules require a cable operator to "provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station," and the cable operator also must provide such notice to the cable system's subscribers.⁶ In addition, a cable operator must notify subscribers of "any changes in rates, programming services or channel positions as soon as possible in writing," with at least 30 days advance notice if the change is within the cable operator's control.⁷

All parties agree that the requested injunctive relief is now moot.⁸ In addition, we exercise our discretion to decline to consider sanctions, and to decline to issue a declaratory ruling addressing application of the notice requirements to this adjudicatory proceeding.⁹

Accordingly, IT IS ORDERED that the Petition in the above-referenced proceeding IS DISMISSED WITH PREJUDICE and that the above-referenced proceeding IS TERMINATED.

¹ Emergency Petition for Injunction Prohibiting Carriage in Violation of the Commission's Rules, CSR-8382-C, filed Dec. 28, 2010 (the "Petition"). The parties subsequently exchanged responsive pleadings. *See* Opposition of Time Warner Cable to Petition for Prohibition of Carriage, CSR-8382-C, filed Jan. 10, 2011 ("TWC Opposition"); Reply of Nexstar Broadcasting, Inc. and Mission Broadcasting, Inc. to Opposition of Time Warner Cable to Emergency Petition for Prohibition of Carriage, CSR-8382-C, filed Jan. 26, 2011 ("Nexstar/Mission Reply").

² *See* Petition at 2-3.

³ *See* TWC Opposition at 1.

⁴ *Id.*

⁵ Nexstar/Mission Reply at 3.

⁶ 47 C.F.R. § 76.1601.

⁷ *Id.* § 76.1603(b).

⁸ Nexstar and Mission's request that the Commission require TWC immediately to honor the network non-duplication requests of the two stations deleted during the third party retransmission consent dispute also is now moot since TWC no longer imports the signals at issue into the market. *See* Petition at 1, n. 1; TWC Opposition at 22.

⁹ *See* 47 C.F.R. § 1.2(a) ("The Commission *may*, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.") (emphasis added); *ACC Licensee, Inc. v. Shentel Telecommunications Company*, Memorandum Opinion and Order, MB Docket No. 12-5, 27 FCC Rcd 7584, 7591, ¶ 18 (MB, 2012) (declining to address alleged notice violations, noting the Commission's discretion not to enforce the notice requirements in all instances).

This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁰

Sincerely,

Steven A. Broeckaert
Senior Deputy Chief, Policy Division
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¹⁰ 47 C.F.R. § 0.283.