

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

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

ORDER ON RECONSIDERATION

Adopted: April 27, 2015

Released: April 28, 2015

By the Chief, Media Bureau:

I. INTRODUCTION

1. Bellizzi Broadcasting Network, Inc. (“Bellizzi”), licensee of low-power television station WEYW-LP, Key West, Florida (“WEYW”), pursuant to Section 1.106 of the Commission’s rules, seeks reconsideration of the Memorandum Opinion and Order (“*Order*”) issued by the Media Bureau on December 16, 2013.¹ The *Order* denied Bellizzi’s must carry complaint filed on behalf of WEYW against Comcast Cable Communications, LLC (“Comcast”) for Comcast’s refusal to carry WEYW on its Key West, Florida cable system serving certain communities in Monroe County, Florida.² For the reasons discussed below, we deny the petition for reconsideration.

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission’s rules require the carriage of “qualified” low-power television stations in certain limited circumstances.³ A low-power television station that conforms to the rules established for low-power television stations in Part 74 of the Commission’s rules will be considered “qualified” if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the low-power television station addresses local news and informational needs that are not being adequately served by full-power television broadcast stations because of the geographic distance of such full-power stations from the low-power station’s community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system’s headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas (“MSAs”) on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full-power television broadcast station licensed to any community within the county or other political

¹ See *Bellizzi Broadcasting Network, Inc., Station WEYW-LP, Key West, Florida*, 28 FCC Rcd 16761 (MB 2013).

² *Id.* at 3.

³ 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

subdivision (of a State) served by the cable system.⁴

3. Bellizzi asserts that WEYW was carried on Comcast's cable systems serving Monroe County in Key West, Florida pursuant to a retransmission consent agreement entered into between the station and Comcast on November 1, 2011.⁵ Bellizzi states that on July 2, 2013, Comcast advised WEYW that it would no longer carry the station beyond the termination of that retransmission consent agreement on December 31, 2013.⁶ Although Bellizzi asserts it made a must-carry demand on July 24, 2013, seeking carriage of WEYW on Comcast's cable system as a must-carry station,⁷ Comcast replied on August 14, 2013, stating that WEYW is not a "qualified" low-power station entitled to mandatory carriage on Comcast's Key West cable system.⁸ On September 20, 2013, Bellizzi filed a complaint against Comcast for its refusal to carry WEYW on its Key West, Florida cable system.⁹ Comcast opposed Bellizzi's complaint arguing that because there are two full-power television broadcast stations already licensed to Key West, Florida, WGEN and WSBS, WEYW does not qualify as a low-power station entitled to mandatory carriage on Comcast's cable system.¹⁰ In the *Order*, the Bureau agreed with Comcast, concluding that WEYW does not qualify as a low-power station entitled to mandatory carriage for failure to meet all of Section 614(h)(2)'s six criteria to be considered "qualified."¹¹ Pursuant to Section 1.106 of the Commission's rules, Bellizzi seeks reconsideration of the *Order*, claiming that the *Order*'s conclusion is legally incorrect, and, as such, the *Order* should be reversed.¹²

III. DISCUSSION

4. In the *Order*, the Bureau concluded that WEYW does not qualify as a low-power station entitled to mandatory carriage on Comcast's Key West cable system because there are two full-power television broadcast stations already licensed to the same community as WEYW namely, WGEN and WSBS.¹³ Bellizzi's argument on reconsideration is that, while the facts of this case are not in dispute, the Commission's interpretation of the law is of "questionable validity."¹⁴ Bellizzi cites *Gardner v. FCC*,¹⁵ for the proposition that extraordinary circumstances are present in this case indicating that WEYW is the only television station providing truly local service to Key West and Monroe County.¹⁶ Bellizzi claims that this fact should be considered when analyzing whether WEYW is "qualified" under the Act and Section 76.55(d)(6) of the Commission's rules.¹⁷ Bellizzi argues that it is a "qualified" low-power station because it provides 28 hours of local programming in English every week to the communities served by

⁴ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

⁵ *Order*, 28 FCC Rcd at 16761, ¶ 4.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See Complaint of Bellizzi Broadcasting Network, Inc. filed Sept. 20, 2013 ("Complaint").

¹⁰ *Id.* at Exh. 3, Letter from Michael Nissenblatt, Comcast, to Lee Peltzman, Counsel for Bellizzi, Aug. 14, 2013.

¹¹ See *Order*, 28 FCC Rcd 16761, 16762-63. (citing 47 U.S.C. § 534(h)(2)(F); 47 C.F.R. § 76.55(d)(6)).

¹² Bellizzi Broadcasting Network, Inc., Petition for Reconsideration at 1 ("*Bellizzi Reconsideration*").

¹³ See *Order*, 28 FCC Rcd 16761, 16762-63. (citing 47 U.S.C. § 534(h)(2)(F); 47 C.F.R. § 76.55(d)(6)). WEYW appears to satisfy the other five requirements to be considered a "qualified" low-power television station.

¹⁴ Bellizzi Reconsideration at 3.

¹⁵ 530 F. 2d (D.C. Cir. 1976).

¹⁶ Bellizzi Reconsideration at 3-4.

¹⁷ *Id.*

Comcast's Key West cable system, including programming addressing the local news and informational needs of Key West residents, whereas the two full-power stations licensed to the same community provide only Spanish language programming and broadcast from studios over 120 miles north of these stations' transmitter sites.¹⁸

5. For the same reasons we stated in the *Order*, we are compelled to deny Bellizzi's petition for reconsideration. WEYN is not a "qualified" low-power television station. Section 76.55(d) of our rules directly implements the mandate of Section 614(h)(2)¹⁹ of the Communications 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 Communications Act's six criteria to be considered "qualified," WEYW's failure to meet this one factor is fatal to its request for mandatory carriage.²⁰ Although Bellizzi asks us to reconsider the decision made in the *Order* based on extraordinary circumstances showing that justice would be served by labeling WEYW a "qualified" low-power television station under the Commission's rules, they ask us to exercise discretion that Section 614(h)(2)(F) does not impart to the Commission. The Commission may not waive any part of the mandatory statutory definition of a "qualified" low-power television station.²¹ Finally, as we have stated before, for purposes of Section 614(h)(2)(F), it is irrelevant if the full-power stations licensed to the same community do not provide locally-focused programming; their proximity is sufficient to prevent WEYW from being considered "qualified."²²

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.55(d) of the Commission's rules, that the petition for reconsideration filed by Bellizzi Broadcasting Network, Inc., on behalf of low-power station WEYW-LP, Key West, Florida **IS DENIED**.

¹⁸ See Complaint at 5 & 6. WEYW also points to Census data which shows that more than 80% of the Monroe County population (which includes Key West) does not speak Spanish whereas over 40% of the Miami-Dade and Broward County populations taken together speak Spanish. See Complaint at 8 & n.20 (citing Exhibit 5, Census Scope, Percent Speaking Spanish – 2000, http://www.census.gov/s12/rank_language_spanish.html (last visited Dec. 16, 2013)).

¹⁹ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

²⁰ See *Continental Broad. Corp. v. Jones Intercable, Inc.*, 9 FCC Rcd 2550, 2551 ¶ 7 (CSB 1994).

²¹ *Washington County Television, Inc. v. DR Partners, d/b/a Dorney Cablevision*, 10 FCC Rcd 3766, 3766 ¶ 2 (CSB 1995). Although WEYW argues it is not asking for us to waive our rules, see Reply at 3, it references a line of cases in which the Commission has considered late filed petitions for reconsideration in "extraordinary circumstances" – effectively waiving the statutory deadline for such filings. See Reply at 3-4 & n.6 (citing *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976) ("It appears that the seemingly mandatory language of section 405 [of the Act] does not prevent the entertainment of rehearing petitions beyond the statutory period where extraordinary circumstances indicate that justice would thus be served."); *Mediacom Southeast, LLC*, 22 FCC Rcd 4825 (MB 2007)); but see *FCC v. Reuters, Ltd.*, 781 F.2d 946, 952 (D.C. Cir. 1986) (refusing to find facts amounting to 'extraordinary circumstances' warranting consideration of a late filed petition for reconsideration); accord *In re Application of Robert J. Maccini*, 10 FCC Rcd 9376, 9376 ¶ 3 (1995); *In re Lloyd Morris*, 27 FCC Rcd 6979, 6980 ¶ 4 (EB 2012). Petitioner's argument is unavailing because the discrete set of Commission precedent it cites has no application in these very different circumstances. 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.

²² *In re Larry L. Schrecongost*, 19 FCC Rcd 5779, 5784 ¶ 12 (2004).

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief,
Media Bureau

²³ 47 C.F.R. § 0.283.