

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

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

MEMORANDUM OPINION AND ORDER

Adopted: November 18, 2015

Released: November 18, 2015

By the Commission:

1. In this Memorandum Opinion and Order, we deny the Application for Review ("AFR")¹ filed by Bellizzi Broadcasting Network, Inc. ("Bellizzi"), licensee of Station WEYW-LP, a low-power television station licensed to Key West, Florida ("WEYW"). Bellizzi seeks review of the Media Bureau's Order on Reconsideration issued on April 28, 2015², which denied Bellizzi's petition for reconsideration of the Bureau's Memorandum Opinion and Order. The Memorandum Opinion and Order denied Bellizzi's must carry complaint filed against Comcast Cable Communications, LLC ("Comcast") for its refusal to carry WEYW on its Key West, Florida cable system.³ For the reasons discussed below, we deny the AFR and affirm the Media Bureau's decision below.

2. In the Order on Reconsideration, the Media Bureau found that WEYW is not a "qualified" low-power station because it does not meet one of the Communications Act's required six criteria to be considered qualified.⁴ Specifically, the Media Bureau found that Key West, Florida is also

¹ Bellizzi Broadcasting Network, Inc., Application for Review, MB Docket No. 13-244, CSR-8837-M (filed May 28, 2015) ("Bellizzi AFR"). Comcast filed an Opposition to Bellizzi's Application for Review and argued that the Commission should deny Bellizzi's AFR because the Media Bureau's Order on Reconsideration is consistent with Commission precedent and Section 614(h)(2) of the Communications Act of 1934, as amended (the "Communications Act"). Comcast Cable Communications, LLC, Opposition to Application for Review, MB Docket No. 13-244, CSR-8837-M (filed June 12, 2015). Bellizzi filed a Motion for Extension of Time on June 25, 2015 seeking an extension of time until July 1, 2015 to file its Reply to Comcast's Opposition to Petition for Reconsideration. Because the Extension Request was filed on June 25, 2015, the filing deadline for its Reply, Bellizzi indicated that it had advised Comcast of the filing of its Motion. 47 C.F.R. § 1.46(c). See also Bellizzi Broadcasting Network, Inc., Motion for Extension of Time, MB docket No. 13-244, CSR-8837-M (filed June 25, 2015). Bellizzi filed its Reply to Opposition on June 30, 2015. Although it is the policy of the Commission that extensions of time shall not be routinely granted, we note that Comcast did not oppose the motion and, in this instance, we find that the public interest would be served by a more complete discussion of the matters pending before the Commission. 47 C.F.R. § 1.46(a).

² Bellizzi Broadcasting Network, Inc. Station WEYW-LP, Key West, Florida, Order on Reconsideration, 30 FCC Rcd 3779 (MB 2015) ("Order on Reconsideration").

³ Bellizzi Broadcasting Network, Inc. Station WEYW-LP, Key West, Florida, Memorandum Opinion and Order, DA 13-2402, 28 FCC Rcd 16761 (MB 2013) ("Memorandum Opinion and Order").

⁴ 47 U.S.C. § 534(h)(2)(A)-(F); 47 C.F.R. § 76.55(d). Pursuant to the Communications Act, 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" "only 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

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the city of license to two full-power television stations, WGEN-TV and WSBS-TV.⁵ Given this, the Bureau concluded that the requirements of Section 534(h)(2)(F) of the Communications Act were not satisfied and therefore held WEYW unqualified for mandatory carriage on Comcast's cable system.⁶

3. On review, Bellizzi argues that the Commission should reverse the Media Bureau's decision denying Bellizzi's must carry complaint.⁷ Bellizzi argues that despite the fact that there are two full-power stations licensed to its community of license, there are "extraordinary circumstances" in the present case which should override the requirement that it meet the requirement in Section 76.55(d)(6) of the Commission's rules to be classified as a "qualified" low-power station.⁸ Bellizzi cites the decision in *Gardner v. FCC* in support of its position that in spite of what seems to be clear language in the Communications Act – in this case, the factors for mandatory carriage of a qualified low-power television station – the Act's language can be interpreted differently "where extraordinary circumstances indicate that justice be served."⁹ Bellizzi asserts that in this case "extraordinary circumstances" exist because it provides local programming that serves the needs of Key West residents while the two full-power stations do not serve the Key West community because they provide only Spanish language programming to the predominantly non-Spanish speaking community of Key West.¹⁰ Further, Bellizzi states that the two full-power stations maintain their main studios and broadcast from Miami-Dade County, over 120 miles from their transmitter sites in Key West.¹¹ Bellizzi argues that these facts should have led the Bureau to conclude that extraordinary circumstances were present and WEYW should be deemed a "qualified" low-power station although it does not meet the six requirements enumerated in our rules.¹²

4. We affirm the Media Bureau's holding in the *Order on Reconsideration*. Bellizzi's AFR raises the same arguments that it previously made in its Petition for Reconsideration of the Media Bureau's *Memorandum Opinion and Order*. Upon review of the AFR and the entire record, we conclude that Bellizzi has failed to demonstrate that the Media Bureau erred in its *Order on Reconsideration*.¹³ The Media Bureau noted correctly in the *Order on Reconsideration* that WEYW is not a "qualified" low-power station and is therefore not entitled to mandatory carriage on Comcast's cable system.¹⁴ Even if it

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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 subdivision (of a State) served by the cable system*. 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d) (emphasis added).

⁵ *Order on Reconsideration*, 30 FCC Rcd at 3779 ¶ 4.

⁶ *Order on Reconsideration*, 30 FCC Rcd at 3780 ¶ 5.

⁷ Bellizzi AFR at 2 (citing 47 U.S.C. § 534(c)(1) and 47 C.F.R. § 76.55(d)(6)).

⁸ Bellizzi AFR at 5-7.

⁹ Bellizzi AFR at 4 (citing *Gardner v. FCC*, 530 F.2d 1086 (D.C. Cir. 1976)).

¹⁰ Bellizzi AFR at 6.

¹¹ *Order on Reconsideration*, 30 FCC Rcd at 3780 ¶ 4 (citing Bellizzi Broadcasting Network, Inc., Complaint, MB Docket No. 13-244, CSR-8837-M (Sept. 20, 2013)).

¹² *Id.* at 3-5.

¹³ Our decision is not based upon the value of Bellizzi's service. Bellizzi maintains, and we have no reason to question, that it provides excellent local service to the residents of Key West, FL.

¹⁴ *Order on Reconsideration*, 30 FCC Rcd at 3780 ¶ 5.

is true that the full-power stations are operating 120 miles from their transmitter sites in Key West, that is not a recognized basis under the statute or our rules for WEYW to be considered a “qualified” low-power station. The *Order on Reconsideration* also correctly concluded that the nature of the programming of the full-power television stations licensed to the Key West, Florida is not relevant to the determination of whether WEYW is “qualified.”¹⁵ As the Media Bureau properly noted, the Commission may not waive any part of the statutory definition of a qualified low-power television station. We thus uphold the Media Bureau’s decision for the reasons stated in the *Order on Reconsideration*.

5. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §155(c)(5) and Section 1.115(g) of the Commission’s rules, 47 C.F.R. § 1.115(g), the May 5, 2015 Application for Review filed by Bellizzi Broadcasting Network, Inc., IS DENIED.

6. IT IS FURTHER ORDERED that Bellizzi’s Motion for Extension of Time, MB Docket No. 13-244, CSR-8837-M (June 25, 2015) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵ *Id.* See also Comcast Opposition at 4 (the “Bureau correctly recognized that the comparative programming content analysis advocated by Bellizzi has no relevance under the governing statute”).