

Stamp and Return

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

FILED/ACCEPTED

In the Matter of

Time Warner Cable

Emergency Petition for Injunction
Prohibiting Carriage In Violation of
The Commission's Rules

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CSR - _____

DEC 28 2010

Federal Communications Commission
Office of the Secretary

To: The Secretary's Office
Attn: Chief, Media Bureau

**EMERGENCY PETITION FOR PROHIBITION OF
CARRIAGE IN VIOLATION OF THE COMMISSION'S RULES¹**

Pursuant to Section 76.7 of the Commission's rules (47 C.F.R. §76.7), Nexstar Broadcasting, Inc. ("Nexstar"), the licensee of NBC-affiliated television broadcast station WBRE-TV, Wilkes-Barre, Pennsylvania ("WBRE"), and Mission Broadcasting, Inc. ("Mission"), the licensee of ABC-affiliated television broadcast station WUTR, Utica, New York, hereby request the Commission prohibit Time Warner Cable ("Time Warner") from carrying WBRE on its cable systems serving certain communities in Delaware, Otsego, Herkimer and Oneida Counties, New York, which are located in the Utica Designated Market Area (the "TW Utica System") and from carrying WUTR on its cable systems serving communities in Essex, Franklin and Clinton Counties, New York, which are located in the Burlington, Vermont-Plattsburgh, New York Designated Market Area (the "TW Plattsburgh

¹ As a potential sanction for the issues raised in this Petition, Nexstar and Mission also request the Commission waive its network non-duplication protection rules (47 C.F.R. §76.94(c)(2)) and require Time Warner to honor immediately the network non-duplication requests of WKTV(TV), licensed to Smith Media License Holdings, LLC ("Smith"), and WVNY(TV), Burlington, New York, licensed to Lambert Broadcasting of Burlington, LLC ("Lambert").

System”) in violation of the Communications Act of 1934, as amended (the “Communications Act”) and the Commission’s rules.

I. Background and Introduction

Nexstar and Mission are parties to a retransmission consent agreement with Time Warner covering cable television distribution of the signals of WBRE in the Scranton-Wilkes-Barre, Pennsylvania market and WUTR in the Utica, New York market. On the evening of December 15, 2010, at 6:00 p.m., Time Warner notified the general managers of WBRE and WFXV, (that is, Time Warner did not even notify Mission, instead it notified the general manager of the Nexstar station that provides services to WUTR pursuant to a shared services agreement) via electronic mail that in six hours (at midnight on December 16), Time Warner would be adding WBRE to its channel line-up on the TW Utica System and WUTR to its channel lineup on the Plattsburgh System.² This last-minute “notice” left Nexstar and Mission with no time or opportunity to object. At 12:00 a.m. on December 16, 2010, Time Warner commenced retransmission of WBRE on the TW Utica System and WUTR on the TW Plattsburgh System.³

Not only did Time Warner fail to lawfully notify Nexstar and Mission of this change, research indicates that Time Warner does not appear to have notified its customers or local franchising authorities about the addition. Nexstar and Mission have been able to locate only one notice that Time Warner provided to its customers regarding the addition of WBRE and WUTR - a table on its retransmission consent policy website advising customers of the

² See Attachment 1, Letters from Time Warner to Nexstar dated December 15, 2010.

³ Time Warner has informed Nexstar and Mission that it interprets the retransmission consent agreement to impose no geographic restrictions on Time Warner’s carriage of the stations such that Time Warner may carry Nexstar’s Jacksonville, Florida Station or Mission’s El Dorado, Arkansas station on the Time Warner New York City system if it so desires. Nexstar and Mission strongly disagree with Time Warner’s interpretation of their retransmission consent agreement, and intend to pursue appropriate remedies.

substitution of WBRE for Smith's WKTV and WUTR for Lambert's WVNY.⁴ Time Warner also apparently issued an online legal notice for its Central New York systems dated December 15, 2010 regarding 130 channels that might be added, relocated, or dropped, but the additions of WBRE and WUTR are nowhere to be found in this notice.⁵ Nexstar and Mission also believe the local franchising authorities were not properly notified of the additions at least 30 days prior to these changes.⁶

Nexstar and Mission now understand that Time Warner's decision to retransmit WBRE on the TW Utica System and WUTR on the TW Plattsburgh System without notification, consent or authority and without providing the statutorily required 30 days advance notice to Nexstar, Mission, its customers or its franchising authorities is part of its negotiating strategy to gain leverage in its retransmission consent disputes with Smith, the licensee of the local Utica NBC affiliate, WKTV, and Lambert, the licensee of the local Plattsburgh ABC affiliate, WVNY. Time Warner has dropped WKTV and WVNY and replaced them with WBRE and WUTR. Time Warner is apparently gambling that its customers will be happy as long as they continue to receive network programming and, therefore, is importing a non-local station (WBRE) over 130 miles to Utica and a non-local station (WUTR) over 140 miles to Plattsburgh.⁷

Time Warner's use of WBRE and WUTR in its game of retransmission consent brinkmanship with Smith and Lambert without providing the required 30 days' notice to any of

⁴ See www.rolloverorgettough.com/smithmedia.

⁵ See Attachment 2.

⁶ Elizabeth Hammond, Nexstar's Vice President & General Counsel spoke with the Mayor David Roefaro of Utica on December 28, 2010 who confirmed that, as of the date hereof, he is unaware of any notice from Time Warner regarding the addition of WBRE to the TW Utica System.

⁷ Based on opinions expressed in the local Utica newspaper, Time Warner is gambling wrong. See Attachment 3.

the required parties is a flagrant violation of the Communications Act and the Commission's rules, and a disservice to its Utica and Plattsburgh subscribers, who are without a local news source in this dangerous weather time of year.

II. Time Warner's Actions Are In Clear Violation of the Communications Act and the Commission's Rules.

The Communications Act and the Commission's rules impose precise notice requirements on cable operators. Section 76.1601 (implementing Section 614(b)(9) of the Act (47 U.S.C. §534(b)(9))) states "a cable operator shall provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station."⁸ This section also requires that notification be provided to subscribers of the cable system. In addition to the requirements of Section 76.1601, cable operators are required to notify customers of any changes in rates, programming services or channel positions as soon as possible in writing, with notice to be given a minimum of thirty (30) days in advance of such change if the change is within the cable operator's control, and when the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.⁹ The underlying purpose of the Notice Rules is to alert subscribers, local franchising authorities and broadcast television stations to changes in programming services prior to implementation of such changes.¹⁰

Time Warner is well aware of the Notice Rules, having been sanctioned by the Commission repeatedly for failing to provide customers and local franchising authorities with

⁸ 47 C.F.R. §76.1601.

⁹ 47 C.F.R. §76.1603. Sections 76.1601 and 76.1603 are hereinafter referred to as the "Notice Rules."

¹⁰ See, e.g., *Media General Communications Holdings, LLC, Request for Waiver of Sections 76.1601 and 76.1603 of the Commission's Rules, Request for Withdrawal of Emergency Enforcement Complaints*, 24 FCC Rcd 11509, ¶6 (MB 2009).

adequate notice prior to service changes. Specifically, the Commission has taken the following recent enforcement actions with respect to Time Warner's repeated disregard of the Notice Rules:

- A consent decree, including a \$25,000 contribution to the U.S. Treasury, to address Time Warner's failure to notify customers of the loss of service occasioned by its conversion to switch digital video delivery of its cable signals;¹¹
- A \$7,500 forfeiture for repositioning channels on its Placentia, California cable system without notifying customers;¹²
- A \$7,500 forfeiture for migrating the National Geographic Channel from its basic tier to its digital tier on its cable system serving San Diego, California without notifying subscribers;¹³ and
- An injunction requiring Time Warner to restore the NFL Network to cable systems where the network was dropped prior to providing the required customer notices and a consent decree in which TWC specifically admitted fault.¹⁴

In addition, in a proceeding just last year, Time Warner requested (and received) a waiver of Sections 76.1601 and 76.1603 to enable Time Warner to add a television signal to its cable systems without providing the requisite 30-day notice to affected parties.¹⁵

As detailed above, Time Warner continues to have a blatant disregard for the Commission's Notice Rules. Time Warner did not provide Nexstar, Mission, its customers or, on information and belief, its franchising authorities with the required 30-day notice, of its

¹¹ *Oceanic Time Warner Cable, a subsidiary of Time Warner Cable, Inc.*, 24 FCC Rcd 12151 (EB 2009).

¹² *Time Warner Cable, Inc.*, 24 FCC Rcd 1064 (EB 2009) (\$7,500 fine for failing to notify customers of change in programming service).

¹³ *Time Warner Cable, Inc.*, 24 FCC Rcd 1059 (EB 2009) (\$7,500 fine for failing to notify customers of change in programming service).

¹⁴ *Time Warner Cable, Order on Reconsideration*, 21 FCC Rcd 9016, 9025, ¶26 (MB 2006), *consent decree adopted*, Order, 21 FCC Rcd 11229 (MB 2006).

¹⁵ *Media General Communications Holdings, LLC*, 24 FCC Rcd 11509 (MB 2009).

programming service change to add WBRE on the TW Utica System and WUTR on the Plattsburgh System.¹⁶ Nexstar and Mission have advised Time Warner that its failure to comply with the Notice Rules is a breach of the parties' retransmission consent agreement and demanded that Time Warner immediately cease carriage of WBRE on the TW Utica System and cease carriage of WUTR on the Plattsburgh System as a result of this breach.¹⁷

In response, Time Warner claimed that it is aware of nothing in the Commissions' rules that would require 30 days' advance notice to Nexstar or any other party in these circumstances, despite its representations to the contrary to the Commission in last year's request to waive the Notice Rules.¹⁸ Apparently Time Warner does not believe that adding a station to a system more than 100 miles away is repositioning the station on a different channel and worthy of the advance notice required to the broadcaster.

Moreover, Time Warner is required by Section 76.1603 to provide notice to its customers and franchising authorities with respect to changes to its programming service, in this instance identifying the channels being added. Time Warner's obscure notice via its website www.rolloverorgettough.com cannot be deemed by the Commission as sufficient to provide its customers or its franchising authorities with the advance notice cable operators are required to provide. Especially since those who go to this website must know to further navigate to another page to actually see the notice. Had Time Warner complied with the Notice Rules, subscribers and the franchising authorities would have been alerted to the substitutions of wholly-irrelevant

¹⁶ The addition of WBRE to the TW Utica System and WUTR to the TW Plattsburgh System is wholly within the control of Time Warner. It was not required by any party or Commission rule to add these stations to these systems at any time. Accordingly, the requirement for 30-day advance written notice is applicable.

¹⁷ See Attachment 4, Nexstar Letter to Time Warner dated December 21, 2010.

¹⁸ See Attachment 5, Time Warner Letter to Nexstar dated December 22, 2010. To the extent the provisions of Section 76.61 of the Commission's rules apply to this Petition, Nexstar believes its letter of December 21 and Time Warner's reply on December 22 fulfill the requirements set forth in Section 76.61(a).

out-of-market stations WBRE for WKNY and WUTR for WVNY prior to being subjected to such changes (and at least its subscribers would have had time to make alternative arrangements to retain their local news programming). Again, contrary to law and its own prior statements, Time Warner simply claims the Notice Rules don't apply.

As Time Warner has previously demonstrated, it does not believe the Commission's rules apply to it. So yet again the Commission must remind Time Warner that it indeed must comply with the Commission's rules. The Commission has the authority and the duty to act immediately to stop Time Warner's disregard of the Notice Rules. At the very minimum, the Commission should prohibit Time Warner from the carriage of WBRE on the TW Utica System and WUTR on the Plattsburgh System.¹⁹ However, because this is not Time Warner's first or even second violation of the Notice Rules, Nexstar and Mission propose the Commission serve Time Warner's subscribers with a remedy that benefits them more directly by permitting WKTV and WVNY to immediately assert network non-duplication protection rights on the TW Utica System and TW Plattsburgh System, as applicable.²⁰ By granting Smith and Lambert immediate

¹⁹ Time Warner's current retransmission consent agreement with Sinclair Broadcasting Company expires on December 31, 2010. To the extent Time Warner adds Nexstar or Mission stations to its systems in place of any Sinclair station (or any other broadcaster's station) without compliance with the Notice Rules, Nexstar and Mission request that the Commission also prohibit such carriage.

²⁰ Smith and Lambert provided Time Warner with network non-duplication notice letters on December 17, 2010. See Attachment 6. Accordingly, this action would require the Commission to grant waivers to Smith and Lambert of the 60-day period that Time Warner is permitted to continue NBC network affiliated carriage in Utica and ABC network affiliated carriage in Plattsburgh. Waiver of the Commission's rules is appropriate when (1) special circumstances warrant a deviation from the general rule; and (2) such deviation would better serve the public interest than would strict adherence to the rule. See 47 C.F.R. §1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). Time Warner's egregious disregard of the Commission's Notice Rules warrant the deviation from the 60-day period during which a cable operator is permitted to continue duplicating network carriage in this instance. In addition, deviation in this case better serves the public interest. The Commission adopted its 60-day notice requirement for network non-duplication protection primarily to ensure adequate time for notice to consumers and other interested parties before relied-upon network programming is removed from a cable system. Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, *Memorandum Opinion and Order*, 4 FCC Rcd 2711, ¶ 71 (1989); Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries, 3 FCC Rcd 5299, ¶100 (1988). The Commission also sought to give cable operators adequate time to provide all legally required notices and make any necessary technical adjustments before

network non-duplication protection rights, Time Warner will have no incentive to import market-irrelevant network affiliates such as WBRE and WUTR and every incentive to reach a resolution to its retransmission consent dispute with Smith and Lambert, thereby restoring local news and other local programming to its Utica and Plattsburgh subscribers.

Time Warner has spent the past year lobbying the Commission that the retransmission consent process is broken, but the real problem with retransmission consent is not the Commission's rules – it is stunts like Time Warner's importing non-local network affiliates without notice or consent in order to avoid engaging in meaningful negotiations for carriage of the local affiliate on a fair value basis. If Time Warner spent less time dreaming up clever strategies for circumventing the law and manipulating its customers, and more time negotiating fair deals with local broadcasters, the circumstances underlying this Petition would not arise. The Commission must not allow Time Warner to brazenly flout the Commission's Notice Rules, while Time Warner does further harm to its subscribers by hiding behind the network non-duplication waiting period. To do so does immeasurable damage to the retransmission consent balance Congress struck in Section 325(b) of the Communications Act.²¹

requiring deletion of programming. *Id.* Enforcement of the 60-day notice provision in this case permits Time Warner to continue reaping the benefits of its violation of the Notice Rules, converting a shield designed to protect consumers into a sword Time Warner can use to prolong its viewers' lack of access to local programming. Nexstar and Mission will not object to a waiver for immediate enforcement with respect to any broadcaster's request for network non-duplication protection under similar circumstances.

²¹ 47 U.S.C. §325(b).

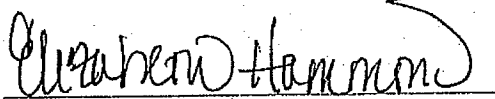
III. Conclusion.

For the foregoing reasons, Nexstar and Mission hereby request the Commission issue an immediate emergency injunction prohibiting Time Warner from carrying WBRE on the TW Utica System and WUTR on the TW Plattsburgh System. Nexstar and Mission further urge the Commission to waive the 60-day notice provisions of Section 76.94(c)(2) of its rules and require Time Warner to immediately recognize and give effect to the network non-duplication rights asserted by Smith and Lambert.

The undersigned have read this Petition, and to the best of his/her 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,

NEXSTAR BROADCASTING, INC.



Elizabeth Hammond
Vice President & General Counsel
5215 N. O'Connor Blvd
Suite 1400
Irving, TX 75039

MISSION BROADCASTING, INC.



Dennis Thatch
Chief Operating Officer
30400 Detroit Road
Suite 304
Westlake, OH 44145-1855

December 28, 2010

CERTIFICATE OF SERVICE

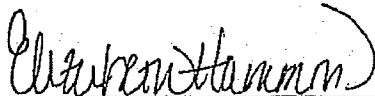
I, Elizabeth Hammond, Vice President & General Counsel of Nexstar Broadcasting, Inc., hereby certify on this 28th day of December 2010, a copy of the foregoing "Emergency Petition For Prohibition of Carriage In Violation of the Commission's Rules" was sent via first class mail, postage prepaid, unless otherwise noted, to the following:

William T. Lake*
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-A865
Washington, D.C. 20554

EVP and Chief Programming Officer
Time Warner Cable Inc.
60 Columbus Circle
New York, NY 10023

Michele Ellison*
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 7-C723
Washington, D.C. 20554

*Via hand delivery


Elizabeth Hammond

ATTACHMENT 1

6005 Fair Lakes Road
East Syracuse, NY 13057
P.O. Box 4791, Syracuse, NY 13221
Tel (315) 634-6100
Fax (315) 463-8020



Via Email/PDF and Federal Express

December 15, 2010

Lou Abitabilo
General Manager
WBRE
62 S. Franklin Street
Wilkes-Barre PA 18701

Dear Lou,

I am writing to let you know that we will be adding carriage of the signal of WBRE in our systems serving certain communities in Delaware, Otsego, Herkimer and Oneida Counties, New York, as permitted by our current retransmission consent agreement. We will cease such carriage no sooner than the later of thirty days from the date hereof or such date that we secure retransmission consent rights from the local NBC affiliate in such areas; we may however contact you to discuss ceasing such carriage prior to thirty days from the date hereof.

If you have any questions or concerns, please do not hesitate to call me.

Sincerely,

Henry Pearl
Area Vice President of Operations
Time Warner Cable – Central New York
6005 Fair Lakes Road
East Syracuse NY 13057

6005 Fair Lakes Road
East Syracuse, NY 13057
P.O. Box 4791, Syracuse, NY 13221
Tel (315) 634-6100
Fax (315) 463-8020



Via Email/PDF and Federal Express

December 15, 2010

Steve Merron
General Manager
WUTR
5956 Smith Hill Road
Utica NY 13502

Dear Steve,

I am writing to let you know that we will be adding carriage of the signal of WUTR in our systems serving certain communities in Essex, Franklin and Clinton Counties, New York, as permitted by our current retransmission consent agreement. We will cease such carriage no sooner than the later of thirty days from the date hereof or such date that we secure retransmission consent rights from the local ABC affiliate in such areas; we may however contact you to discuss ceasing such carriage prior to thirty days from the date hereof.

If you have any questions or concerns, please do not hesitate to call me.

Sincerely,

Henry Pearl
Area Vice President of Operations
Time Warner Cable – Central New York
6005 Fair Lakes Road
East Syracuse NY 13057

ATTACHMENT 2



Legal Notice -- December 15, 2010

Time Warner Cable's agreements with programmers to carry their services routinely expire from time to time. We are usually able to obtain renewals or extensions of such agreements, and carriage of programming services is discontinued only in rare circumstances. The following agreements with programmers are due to expire soon, and we may be required to cease carriage of one or more of these services in the near future where these services are offered:

WBPN	WFFF	WGMU-CA	WICZ /WICZ HD	WIVB/WIVB HD	WKTV/WKTV HD
WNLO/WNLO HD		WNYO/WNYO DT2	WNYS/WNYS HD	WNYT/WNYT HD	WSYT/WSYT HD
WUHF/WUHF HD		WUTV/WUTV HD	WVNY/WVNY DT	Current TV	Fox Reality
IndiePlex	Lifetime	RetroPlex	truTV	The Erotic Networks/Pleasure	
Weather Channel					

Encore/Encore HD/Encore Action/Encore Love/Encore Mystery/Encore WAM/Encore Westerns
Starz!/Starz! HD/Starz! Cinema/Starz! Comedy/Starz! Comedy HD/Starz! Edge/Starz! Edge HD/Starz! In Black
Starz! Kids & Family/Starz! Kids & Family HD

The following networks may be added, relocated, dropped or have a name change within some viewing areas:

WBNG DT2	WCAX HD	WHEC/WHEC HD	WJKP	WIVB/WIVB HD	WKBW	WKTV HD	WNMN
WNYO/WNYO DT2		WNYS DT2	WPIX	WQLN	WSEE	WSKA	WSTM HD
WSKG/WSKG HD/WSKG2/WSKG3		WSWB	WVIA HD	WXXI	WWNY HD	A & E	Access TV
American Life	Art & Coin	BBC America	Bravo C-Span2	CMT/CMT HD	Cartoon	Cooking Channel HD	
Cool TV Network		Corner Store TV	Discovery Health/HD	Discovery Kids		DIY HD	
EI	ESPN Goal Line	Entertainment on Demand	EWTV/HD	FX	Flix	Fit TV	Fox Sports Carolina, West
Fuse	Game HD2	GMC/GMC HD	Golf Channel	Government Access	HSN	Hallmark Movies/HD	
History & Nature OD		History Channel International HD		Investigation Discovery/HD		Jewelry Channel	
ION/ION HD	"J" TV	Kabillion OD	Lifetime HD	Lifetime Movie Network		Liquidation Channel	
Movies on Demand in Simulcasts	MLB TV	MSG Plus	Music Choice Pop& Rock/Music Choice Urban & Latin				
OnTV4U	OTB	NBA HD	National Geographic	News & World OD	NESN		
Public Access /OnTWC (Elmira only)		Revenue Frontier/Celebrity Shopping	Shop Zeal 2	Showtime SVOD HD			
VOD HD	Speed2	Sportskool OD	Sports South	SportsNet NY	Sportsman Channel	Style	
Sundance	TBS	tru TV	TV Guide	TV Shows on Demand	TV Superstore	TWC Sports	
Untamed TV - Wild		VH1 HD	YNN	Zee TV			

You may downgrade or terminate service without charge at any time. Further, if carriage of a premium channel is discontinued and you have incurred installation, upgrade or other one-time charges relating to such premium service within six months prior to the date of the change, you may elect to downgrade or terminate service within 30 days and obtain a rebate of any such charge.

By law, we are required to make this notification. Channel carriage notices are also found at our website: www.twcnny.com.

ATTACHMENT 3

What gives Time Warner right to black out WKTV?

Who does Time Warner think they are by not carrying WKTV? Perhaps they have forgotten who was here first. WKTV was around way before cable ever existed.

As a child growing up, we only had five channels. Our news channels were WKTV and WUTR. We used rabbit ears.

So please tell me what gives Time Warner the right not to carry WKTV. Time Warner charges enough just for standard cable.

LORI WILLIAMS
Whitesboro

Can cable subscribers expect lower bill?

Since Time Warner has discontinued WKTV, I would like to know if my cable bill will be lower, since most of what we watch is now gone. I'm not interested in news from Pennsylvania.

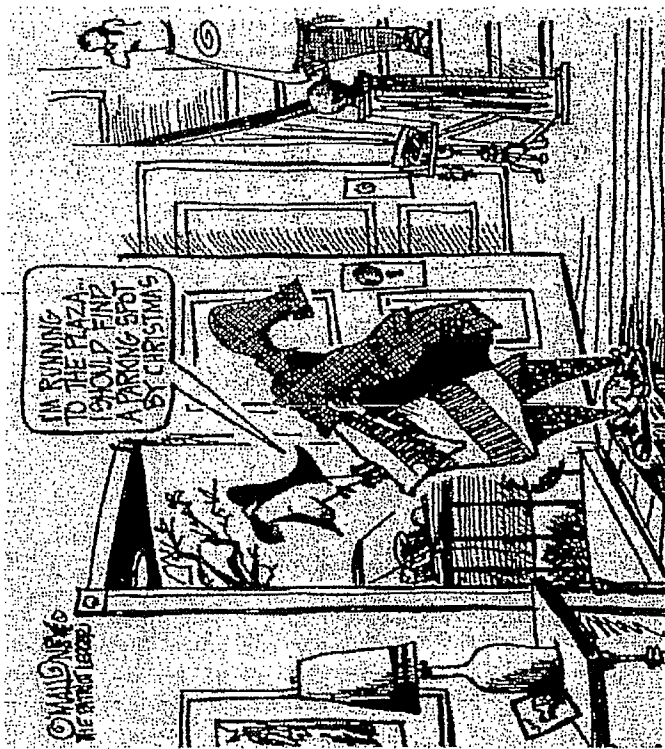
MARJORIE KOGUT
Holland Patent

75,000 viewers left out of cable TV equation

In a perfect world, this controversy between Time Warner and WKTV wouldn't happen. There would be concessions on both sides.

What is it that neither side seems cognizant of? Seventy-five thousand people no longer have programming available to them. How many of them don't have computers, are unable to afford a digital converter, use the resources of this community that are advertised on their local station, give to the charities and benefits such as Children's Miracle Network and overall consider this their major resource for many other things?

On the other hand, those of us who can afford it have no problem canceling Time Warner and



moving on to Dish Network.

If Time Warner really cared about our comfort, they would at least have hooked up the Syracuse affiliate for NBC, not Pennsylvania.

CAROL BOOR
Clinton

All viewers should be any station's priority

I find it ironic that WKTV is upset with the cable company and the loss of viewers, when earlier this year WKTV was off the air for days.

Over-the-air viewers were left in the dark, many rural families who rely on news and weather information who don't have cable were upset.

One viewer who called in was told "our main viewers are on the cable so we are not too concerned about the over-the-air signal." Thanks a lot.

The local station should care about all viewers in the local

area no matter how they receive the signal.

EDWARD PRIOR
Clayville

WKTV deserves to be part of Time Warner package

The standoff between WKTV and Time Warner Cable boils down to money. WKTV wants to be paid by Time Warner for use of its programming.

WKTV programming has more viewers than any other station offered by Time Warner. If cable can pay for sports programming and other channels, they can compensate for a station that actually matters to this community.

These two corporations don't live here. They aren't senior citizens or working people who still have analog television sets and aren't in a position to purchase additional equipment so they can get WKTV. Every local municipality has a contract with Time

Warner Cable. Perhaps those municipalities need to call their governing bodies together and revisit those agreements immediately.

WKTV has a record of service in its 60-plus years to this community. From the humane society to hospice to the fundraiser by a local fire department, WKTV has used its station to be a voice for this community.

I would venture to say every one of us has been touched by something that local television reported, supported or promoted.

It's time for all of us to take a stand, and send a message to these corporations.

KATHY CONTINO-TURNER
Illion

Time Warner seems to care little about viewers

I am writing to express my opinion in the WKTV/Time Warner dispute over cable carriage and the substitution of a distant signal.

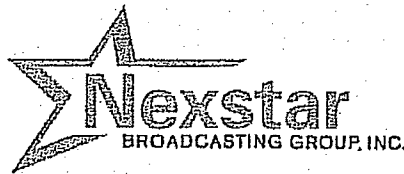
This proves that Time Warner does not care what local viewers want, nor do they care about public safety, or emergency information that is delivered to the public, school closings, storm warnings, local public service, local news or anything else.

A lot of people are angry and upset over this situation, and Time Warner should bargain in good faith, and come to an agreement with fair value for WKTV, which has long served this community, while Time Warner has not.

All Time Warner cares about is their bottom line and how much profit they can make.

JOSEPH MARESKY
Rome

ATTACHMENT 4



December 21, 2010

Via Electronic Mail and Overnight Delivery

Michelle N. Kim
Group Vice President & Chief Counsel, Programming
Time Warner Cable
60 Columbus Circle
New York, New York 10023

Re: Notice of Breach of Agreement

Dear Ms. Kim:

On the evening of December 15, 2010, Henry Pearl, Area Vice President of TW Central New York, notified Nexstar and Mission, as applicable, that Time Warner has added WBRE-TV to its systems serving certain communities in Delaware, Otsego, Herkimer and Oneida Counties, New York (the "Utica System"), and added WUTR to its systems serving communities in Essex, Franklin and Clinton Counties, New York (the "Plattsburg" System). We continue to object to Time Warner's interpretation of the agreement as permitting Time Warner to carry any Nexstar, Mission or Four Points' station on any Time Warner system throughout the country. As the legislative history and relevant Federal Communications Commission Orders make clear, retransmission consent is inherently granted with respect to carriage of stations in their local markets, not in non-local markets in distant parts of the country. (Time Warner is equally aware that the networks grant authority for retransmission consent only within local markets and on a significantly viewed basis in their network affiliation agreements.) Therefore, it is absurd for Time Warner to suggest that the parties negotiated or even intended to negotiate for carriage rights covering all of Nexstar's, Mission's and Four Points' stations on every Time Warner system nationwide during the last retransmission consent negotiations. Indeed, had Nexstar suggested to Time Warner that the agreement was contingent on Time Warner' carriage of its station in Jacksonville, Florida on its New York City system at the time the agreement was executed, the agreement never would have been executed by Time Warner.

We also bring to your attention that these additions are in clear violation of federal law. Pursuant to §76.1601 of the FCC's rules (47 C.F.R. §76.1601), a cable operator is required to provide written notice to a broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. As Time Warner itself has previously acknowledged, the addition of a station to a system requires this advance notice (see e.g., Time Warner's Request For Expedited Waiver Of Part 76 Cable System Channel Change And Repositioning Notification Procedures with respect to the addition of television station WBTW back to its systems serving various communities in South Carolina). Time Warner's notice of the addition of WBRE-TV on its Utica System and WUTR on its Plattsburg System was delivered a scant handful of hours prior to the addition, after business hours, and in a manner inconsistent with the retransmission consent agreement. (As of the date hereof, we have yet to be properly notified by

Michelle Kim
December 21, 2010
Page 2

Time Warner as required pursuant to the retransmission consent agreement.) We object to this lack of timely notice and will take all actions we deem necessary to protect our rights based on this lack of notice.

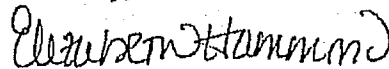
In addition, it is a well-established principle of contract law that parties to a contract are deemed to have contracted with reference to existing law, and that all applicable provisions of state and federal law existing at the time of the formation of a contract are regarded as a part of the contract as implied terms. Therefore, Time Warner's failure to comply with §76.1601, and correspondingly §76.1603 with respect to notification of its customers and local franchising authorities, prior to adding WBRE-TV to the Utica System, and adding WUTR to the Plattsburg System, constitutes a material breach of the retransmission consent agreement between Time Warner, Nexstar Broadcasting, Mission Broadcasting and Four Points Media Group.

Pursuant to Section 11(a) of the retransmission consent agreement, you are hereby notified that you have thirty (30) days to cure this breach. We will consider Time Warner to have cured the breach only by its immediate removal of WBRE-TV from the Utica System and by its immediate removal of WUTR from the Plattsburg System until such time as Time Warner provides us with 30 days advance notice (after the removal of unlawful carriage) of its intent to add these stations to its systems and confirms that it has provided its customers and franchising authorities with their requisite 30 day notices. (We are not waiving our continued and ongoing objection to Time Warner's interpretation of the agreement as permitting this carriage should Time Warner cure the breach.) If Time Warner does not cure this breach as required by the agreement, the agreement will terminate only with respect to Time Warner's rights (if any) to carriage of WBRE-TV on the Utica System and carriage of WUTR on the Plattsburg System on January 22, but any such termination will have no effect on the broadcasters' rights to indemnification for the damages caused by Time Warner's conduct.

We further clarify that this is a unilateral action taken by Time Warner in breach of the retransmission consent agreement and federal law. Accordingly, Nexstar and Mission have no obligation to provide Time Warner with a good quality signal as required by Section 3, nor do Nexstar and Mission have any copyright obligations to Time Warner with respect to its recently commenced carriage of WBRE-TV on the Utica System and WUTR on the Plattsburg System.

We look forward to your prompt response confirming that Time Warner come into compliance with applicable law and the agreement promptly. This letter is written without waiver of any broadcaster's rights to seek legal or equitable remedies in connection with the practices described above, all of which are expressly reserved.

Sincerely,



Elizabeth Hammond
Vice President & General Counsel

Michelle Kim
December 21, 2010
Page 3

cc: Mark Lawrence, EVP & General Counsel
Melinda Witmer, EVP & Chief Programming Officer
David M. Lange, Assistant Chief Counsel
Perry Sook
Jean Dietze, Sr Vice President – Affiliate Relations, NBC Universal
John Rouse, Sr Vice President – Affiliate Relations, ABC Television Network

ATTACHMENT 5

60 Columbus Circle
New York, NY 10023
Tel 212-364-8480
Fax 704-973-6342
michelle.kim@tvcable.com

Michelle N. Kim
Group Vice President & Chief Counsel, Programming



December 22, 2010

Via Federal Express & Facsimile (972-373-8888)

Elizabeth Hammond
Vice President & General Counsel
Nexstar Broadcasting Group, Inc.
5215 North O'Connor Blvd.
Suite 1400
Irving, TX 75039

Dear Ms. Hammond:

This letter responds to your December 21 notice asserting that Time Warner Cable ("TWC") is in breach of its retransmission consent agreement with Nexstar ("Agreement"). In that notice, you expressly invoke the thirty (30) day cure provision found in Section 11(a) of the Agreement. Although we continue to evaluate Nexstar's position, I thought it would be useful to provide you with our initial reaction to your letter.

Nexstar's position is that TWC may not carry WBRE and WUTR outside those stations' designated market areas. As we explained in our letter of December 16, however, the language of Section 1 of the Agreement provides TWC the right to retransmit the stations on *each* "System" and defines "System" as "*any*" TWC owned or operated cable system. Nowhere does the Agreement impose any geographic limitations on TWC's carriage rights with regard to the covered stations. It is well established that where, as here, the language of the contract is clear, that language must govern the contract's interpretation. Because the Agreement plainly grants TWC the right to retransmit WBRE and WUTR on *any* of its systems, it is not clear to us how TWC's exercise of that right could cause a breach.

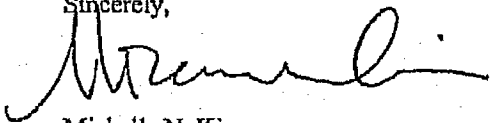
We also fail to understand your position that retransmission consent is "inherently granted with respect to carriage of stations in their local markets." Many retransmission consent agreements—like the one at issue—are not so limited, and the FCC has expressly acknowledged parties' right to enter into such arrangements. *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rod 2965 ¶ 148 (1993) (explaining that "all television stations, local and distant alike, have retransmission consent rights," and categorically rejecting the notion that "broadcasters do not have that right with respect to cable systems outside the market"); *id.* ¶ 174 (emphasizing that the language of "particular contracts," rather than the statute, will determine the scope of a broadcaster's grant of retransmission consent). Indeed, if retransmission consent agreements *never* provided for out-of-market carriage and networks invariably prohibited such grants in affiliation agreements, then there would be no need for the FCC's non-duplication rules or, for that matter, the distant signal importation provisions of Section 111 of the Copyright Act. Moreover,

Nexstar's assertion that TWC would not have agreed to an *obligation* to carry these stations out of market is beside the point. As we have previously explained, Section 1 of the Agreement grants TWC broad carriage rights, but an entirely separate provision determines TWC's carriage obligations, and those are far more limited.

With respect to Nexstar's arguments about TWC's notice obligations, we are aware of nothing in the FCC's rules that would require 30 days' advance notice to Nexstar or to any other party in these circumstances. Nor is it clear how any such regulatory requirement would bear on our compliance with the Agreement in any case. Your assertion that Section 76.1601 of the FCC's rules required written notice to Nexstar at least 30 days in advance of our carriage of WBRE-TV and WUTR in additional communities seems to misapprehend the text of the rule. That provision applies only where a cable operator "delet[es]" or "reposition[s]" a station, 47 C.F.R. § 76.1601, neither of which has occurred here. Nor has TWC "acknowledged" that Section 76.1601 or 76.1603 applies more broadly, as you assert. TWC filed the waiver request you cite because its restoration of a broadcast signal that had been temporarily dropped entailed repositioning the Home Shopping Network. That proceeding accordingly has no relevance here, where TWC's carriage of the Nexstar stations out of market required neither the deletion nor repositioning of any programming service. Indeed, in the Media Bureau order granting TWC's request, the Bureau described "the underlying purpose of the applicable rules" in relevant part as alerting "broadcast television stations *that will be deleted or repositioned* to changes in programming services prior to implementation of such changes." *Media General Communications Holdings*, Memorandum Opinion and Order, 24 FCC Rcd 11509 ¶ 7 (MB 2009) (emphasis added).

In light of the foregoing, we believe that Nexstar may not terminate the Agreement and must live up to the signal quality, copyright, and all other obligations contained therein. We will, however, take under advisement your demand for cure within 30 days and will remain available to further discuss these matters with you at your convenience.

Sincerely,



Michelle N. Kim

cc: Marc Lawrence-Apfelbaum – Executive Vice President & General Counsel
Melinda Witner – EVP & Chief Programming Officer
Perry Sook – Chief Executive Officer, Nexstar Broadcasting Group, Inc.
Steve Merren – General Manager WUTR
Lou Abitabilo – General Manager WBRE
David M. Lange – Assistant Chief Counsel
Susan Weinstein – Vice President, Programming

ATTACHMENT 6

December 17, 2010

Via Certified Mail, Return Receipt Requested
Via Facsimile (315-463-2088)

Mr. Henry Pearl
Time Warner Cable
6005 Fair Lakes Road
East Syracuse, NY 13057

Dear Mr. Pearl:

As you know, WKTV(TV), Channel 2 at Utica, New York, is the primary network affiliate of the NBC Television Network for the Utica Designated Market Area. Smith Media License Holdings, LLC ("Smith") is the licensee of WKTV(TV). WKTV(TV)'s main studio is located at 5936 Smith Hill Road, Utica, NY 13503

As required by the FCC, Smith hereby notifies you that, on December 16, 2010, it entered into an amendment to its network affiliation agreement with the NBC Television Network. Pursuant to 47 C.F.R. § 76.92, the amendment reiterates and reconfirms WKTV(TV)'s existing network non-duplication protection through December 31, 2015, with respect to the simultaneous duplication of all NBC television network programs. For your convenience, we are attaching a copy of the amendment which addresses the station's network non-duplication rights.

Currently, WKTV(TV) broadcasts regularly scheduled NBC Television Network programming during the time periods listed in Attachment A to this letter. From time to time, WKTV(TV) broadcasts NBC network programs, including news and sports, in additional time slots. FCC rules prevent a local cable operator from carrying the signal of any other television station when such other station is broadcasting any NBC programming protected by WKTV(TV)'s network non-duplication rights.

It is our understanding that your cable system is not honoring WKTV(TV)'s network non-duplication rights. Therefore, Smith hereby formally asserts its right to require all cable system's owned or operated by Time Warner Cable within WKTV(TV)'s zone of protection as defined by the FCC's rules to begin providing network non-duplication protection immediately. Please contact me directly if you have any questions concerning this matter.

Sincerely,



Ian J. Guthrie
Vice President -- Chief Financial Officer

Enclosures

Cc: Ms. Carrie Bocian (via email)

ATTACHMENT A

NBC Programmed Time Periods:

Monday through Saturday: 8:00-11:00 P.M.
Sunday: 7:00-11:00 P.M.

Monday through Thursday: 11:35 P.M.-2:05 A.M.
Friday: 11:35 P.M.-2:35 A.M.
Saturday: 11:30 P.M.-1:01 A.M.

Monday through Friday: 4:30-5:00 A.M., 7:00-10:00 A.M. and 6:30-7:00 P.M.
Saturday: 7:00-9:00 A.M. and 6:30-7:00 P.M.
Sunday: 8:00-10:00A.M. and 6:30-7:00 P.M.

Monday through Friday: 1:00-3:00 P.M.
Saturday: 10:00A.M.-1:00 P.M.

Monday through Thursday: 2:05-4:00 A.M.
Friday: 2:35-4:30 A.M.
Saturday: 1:01-2:30 A.M.
Sunday: 11:30 P.M.-1:30 A.M.

December 16, 2010

Smith Media License Holdings, LLC (as assignee)
(SMLLC License Sub)
Utica, New York

30 Rockefeller Plaza,
New York, NY 10112
212 664 4444 tel

RE: WKTV (Utica, New York)

Ladies and Gentlemen:

The following shall constitute an amendment to the television network affiliation agreement (the "Agreement") between the licensee of station WKTV ("Station") and the NBC Television Network ("NBC"), effective as of April 4, 1995.

1. During the term of the Agreement, Station shall, by the terms of this amendment, be entitled to invoke protection against the simultaneous duplication of NBC's network programming as carried by Station imported within a radius from Station's designated community of license as defined in Section 73.606 of the Rules of the Federal Communications Commission ("FCC") to the maximum geographic extent from said community of license permitted under the present Sections 76.92 and 73.658(m) of the FCC's Rules and in accordance with the terms and conditions of said Rules.

2. Either party shall have the right to terminate this amendment at any time during the term of the Agreement, by written notice to the other given at least 60 days prior to the effective date of such termination, but only in the event of the following:

(i) Station grants consent to the retransmission of its broadcast signal by any cable television system or, except as provided in subparagraph 2(b) (ii) below, to any other multichannel video program distributor ("MVPD"), as defined in Section 76.64(d) of the FCC Rules, whose carriage of broadcast signals requires retransmission consent, and such cable system or MVPD is located outside the Designated Market Area ("DMA") as defined by Nielsen to which Station was assigned, unless Station's signal is actually carried by such cable system or MVPD as of April 1, 1993, or, with respect to such cable system, is "significantly viewed" (as determined by the FCC) as of April 1, 1993. In areas in addition to those in which it was "significantly viewed" as of April 1, 1993 ("Additional Viewing Areas"), NBC agrees that it will negotiate in good faith with Station regarding a possible extension of Station's grant of the right to retransmit its broadcast signal to cable systems in the Additional Viewing Areas; or

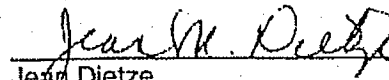
(ii) Station grants consent to the retransmission of its broadcast signal by any MVPD that provides such signal to any home satellite dish user, unless such user is located within Station's own DMA or is an "unserved household" as defined in Section 119 (d) or any successor provision of Title 17 of the United States Code.

Any notice of termination under paragraph 2 hereof given by either party may be withdrawn by such party if, as of the effective date provided therein, the circumstances giving rise to such party's right of termination no longer exist.

To the extent that any term of the Agreement is inconsistent with the terms of this amendment, this amendment shall prevail. Except as modified by this amendment, the Agreement shall remain in full force and effect.

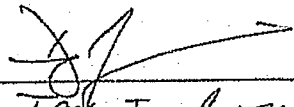
Very truly yours,

NBC Universal, Inc.



Jean Dietze
Senior Vice President, Affiliate Relations

AGREED AND ACCEPTED:
Smith Media License Holdings, LLC

BY: 

Name: Ian J. Bernau
Title: VP - CFO

December 17, 2010

Via Certified Mail, Return Receipt Requested

Via Facsimile (315-463-2088)

Mr. Henry Pearl

Time Warner Cable

6005 Fair Lakes Road

East Syracuse, NY 13057

Dear Mr. Pearl:

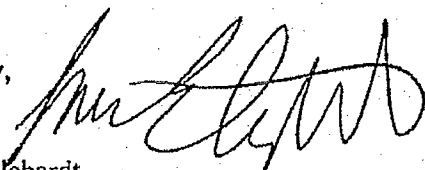
As you know, WVNY(TV), Channel 22 at Burlington, Vermont, is the primary network affiliate of the ABC Television Network for the Burlington-Plattsburgh Designated Market Area. Lambert Broadcasting of Burlington, LLC ("Lambert") is the licensee of WVNY(TV). WVNY(TV)'s main studio is located at 298 Mountain View Drive, Colchester, Vermont 05446

As required by the FCC, Lambert hereby notifies you that, on December 17, 2010, it entered into an amendment to its network affiliation agreement with the ABC Television Network. Pursuant to 47 C.F.R. § 76.92, the amendment reiterates and reconfirms WVNY(TV)'s existing network non-duplication protection through December 31, 2014, with respect to all ABC television network programs during the period beginning forty-eight hours before and seven days after the live time period for broadcast of the network program. For your convenience, we are attaching a copy of the amendment which addresses the station's network non-duplication rights.

Currently, WVNY(TV) broadcasts regularly scheduled ABC Television Network programming during the time periods listed in Attachment A to this letter. From time to time, WVNY(TV) broadcasts ABC network programs, including news and sports, in additional time slots. FCC rules prevent a local cable operator from carrying the signal of any other television station when such other station is broadcasting any ABC programming protected by WVNY(TV)'s network non-duplication rights.

It is our understanding that your cable system is not honoring WVNY(TV)'s network non-duplication rights. Therefore, Lambert hereby formally asserts its right to require all cable system's owned or operated by Time Warner Cable within WVNY(TV)'s zone of protection as defined by the FCC's rules to begin providing network non-duplication protection immediately. Please contact me directly if you have any questions concerning this matter.

Sincerely,


Sam Englehardt

Enclosures

Cc: Ms. Carrie Bocian (via email)

ATTACHMENT A

ABC Programmed Time Periods:

Monday-Friday	3:00 - 5:00 am, 7:00 - 9:00 am, 6:30 - 7:00 pm, 1:00 - 4:00 pm, 8:00 - 11:00 pm, 11:35 pm - 12:35 am
Saturday	8:00 - 9:00 am, 9:00 am - 12:00 pm, 6:00 - 6:30 pm, 8:00 - 11:00 pm
Sunday	8:00 - 10:00 am, 6:00 - 6:30 pm, 7:00 - 11:00 pm



December 16, 2010

Mr. Ian Guthrie
On behalf of WVNYY/Lambert Broadcasting LLC
1215 Cole St.
St. Louis, MO 63106

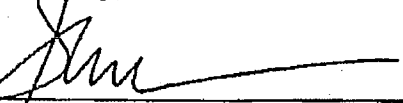
Reference is made to the ABC Television Network Affiliation Agreement ("the Agreement") dated September 20, 2010, between us and Lambert Broadcasting LLC relating to broadcast station WVNYY-TV, Channel 22.1, Burlington, VT ("the Station"). For and in consideration of their mutual undertakings, ABC Television Network ("ABC") and Lambert Broadcasting LLC ("Broadcaster") agree as follows:

Broadcaster shall be entitled to invoke network non-duplication protection as defined by Section 76.92 of the FCC rules with respect to Network programs in any and all formats, as follows:

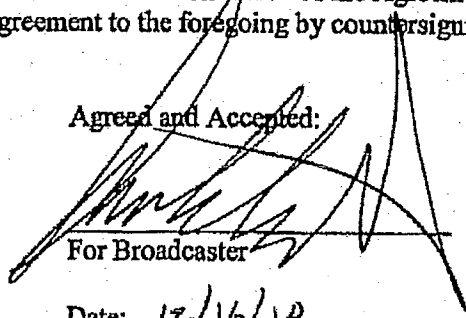
1. The geographic zone of network non-duplication protection shall be the Designated Market Area ("DMA") (as defined by Nielsen) in which Station is located, or any lesser zone pursuant to any geographic restrictions contained in the FCC rules and regulations, now or as subsequently modified.
2. Network non-duplication protection shall extend only to all Network programs that Station clears in their live, in-pattern time periods in accordance with the Agreement. Protection shall not extend to individually pre-empted programs of an otherwise cleared series or programs that Station fails to clear.
3. Network non-duplication protection for Network programs that Station clears in accordance with the Agreement shall be effective 48 hours prior to and ending at 12 midnight on the seventh day following the live time period designated by ABC for broadcast of such network programs by Station.
4. Broadcaster is under no obligation to exercise in whole or in part the network non-duplication rights granted under this Letter Agreement.

These rights are effective immediately and extend through the term of the Agreement (including renewals). All other terms and conditions of the Agreement remain in full force and effect. Please signify your agreement to the foregoing by countersigning in the space indicated below.

Sincerely,


For ABC

Agreed and Accepted:


For Broadcaster

Date: 12/16/10