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October 11, 2017

***VIA HAND DELIVERY AND ELECTRONIC FILING***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: In the Matter of Liberman Broadcasting, Inc. and LBI Media, Inc. v. Comcast Corporation and Comcast Cable Communications, LLC – MB Docket No. 16-121; File No. CSR-8922-P**

Dear Ms. Dortch,

On behalf of Liberman Broadcasting, Inc. and LBI Media, Inc. (together, “LBI”), this letter responds to the letter filed yesterday on behalf of Comcast Corporation and Comcast Cable Communications, LLC (together, “Comcast”) in the above-captioned proceeding.<sup>1</sup> In making its argument that this proceeding is now moot, Comcast offers no legal justification, applicable precedent, nor policy justification for granting its request. Rather its letter appears to be a transparent attempt to further delay the Bureau in granting LBI the appropriate relief it seeks under the Commission’s rules and the *Comcast-NBCU Order*. The Bureau should dispatch with Comcast’s argument and grant LBI’s petition for reconsideration.

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<sup>1</sup> Letter from Michael D. Hurwitz, Counsel to Comcast, to Marlene H. Dortch, FCC, MB Docket No. 16-121 (Oct. 10, 2017). In the letter, Comcast argues that LBI’s election of must-carry status for three Estrella TV stations in Houston, Denver, and Salt Lake City for the upcoming three-year cycle moots LBI’s pending petition for reconsideration of the Media Bureau’s August 26, 2016 order dismissing LBI’s program carriage complaint against Comcast on standing grounds. See *Liberman Broadcasting, Inc. v. Comcast Corp.*, *Memorandum Opinion and Order*, 31 FCC Rcd. 9551, 9556 ¶ 10 (2016) (“*Order*”).

As a threshold matter, LBI's petition for reconsideration cannot be moot because LBI has not received the relief it seeks in the complaint.<sup>2</sup> First, Estrella TV continues to not be carried on comparable terms and conditions as Comcast-affiliated Telemundo and NBC Universo, and continues to seek an order granting such relief and enjoining Comcast from engaging in future unlawful discrimination.<sup>3</sup> Election of must-carry status ensures only that Comcast carries LBI's Houston, Denver, and Salt Lake City stations during the upcoming election cycle. But unlike both Telemundo and NBCU Universo, LBI will not receive any compensation for such carriage.<sup>4</sup> These must-carry elections also have no effect on LBI's claim of unlawful discrimination by Comcast against Estrella TV in its "white areas," including major markets such as Philadelphia, Boston, and San Francisco, where an Estrella TV broadcast signal does not exist. Estrella TV continues to receive no carriage at all from Comcast in these "white areas," while both Telemundo and NBC Universo do.<sup>5</sup>

Further, LBI's must-carry elections do not moot its claim that Comcast unlawfully conditioned carriage of Estrella TV on the acquisition of a financial interest.<sup>6</sup> Indeed, Comcast does not even address this claim in its letter. Third, the must-carry elections do not moot LBI's request for any other relief the Commission deems appropriate, including an order preventing Comcast from retaining the benefits of its illegal activity.<sup>7</sup>

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<sup>2</sup> Warren C. Havens, *Order on Reconsideration*, 26 FCC Rcd. 13064 ¶ 1 (2011) (petition is moot when "[p]etitioners have received all the relief that they can").

<sup>3</sup> Complaint ¶ 87.

<sup>4</sup> Letter from Markham C. Erickson, Counsel to LBI, to Marlene H. Dortch, FCC, at 22, MB Docket No. 16-121 (May 15, 2017).

<sup>5</sup> *Id.* at 20. Additionally, Comcast argues that LBI's claim that Comcast unlawfully discriminated against it with regard to "white area" carriage is moot because "LBI has argued that any claim related to its satellite feed should *also* cover the broadcast signals in Houston, Denver, and Salt Lake City." To the extent this argument is understandable, it likewise should be rejected. It lacks any reasoned analysis or legal support. That granted relief from Comcast's unlawful discrimination against LBI in Estrella TV's "white areas" could also extend to markets where must-carry has been elected for the upcoming three-year cycle cannot reasonably preclude relief in the markets where Estrella TV is distributed on a non-broadcast basis.

<sup>6</sup> Complaint ¶ 89.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E) (in determining the forfeiture amount for violations of the Commission's rules, the Commission shall "take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require").

Additionally, Comcast's contention that "a broadcaster's must-carry election is final" is wrong. LBI's election of must-carry status for its Houston, Denver, and Salt Lake City stations does not prohibit the Commission from ordering the relief LBI seeks. It is fundamental that the Commission may suspend, revoke, amend, or waive for good cause shown any provision of its rules.<sup>8</sup> *Radio Perry II*, relied on by Comcast, recognizes this unremarkable proposition. It states only that broadcasters – not the Commission – may not change a valid election.<sup>9</sup> *Radio Perry II* further recognizes the legitimacy and viability of private carriage agreements between cable operators and broadcast stations governing terms of carriage.<sup>10</sup> Comcast does not argue, nor could it, that the Commission cannot require that Comcast grant the relief LBI has requested, including carriage on comparable terms and conditions as Comcast-affiliated Telemundo and NBC Universo.

Finally, a finding that any of LBI's claims is mooted would further and prejudicially punish LBI for the already substantial delays in acting on its petition for reconsideration. Since the filing of the complaint, Comcast has continued to refuse to negotiate with LBI for carriage, signaling that retransmission consent negotiations in future election cycles would be fruitless. Comcast has also leveraged Estrella TV's lack of distribution on Comcast's systems in the Houston and Denver markets, where Comcast owns the Telemundo station, to its own benefit by touting such lack of distribution to advertisers as a reason for them to advertise with Telemundo and not Estrella TV. A finding that LBI's claims are mooted by electing must-carry would incentivize Comcast and other MVPDs to engage in similar illegal and discriminatory actions in the future, with the expectation that the slow wheels of justice would force the broadcast station to settle for must-carry and then claim that the Commission can no longer address the unlawful activity that generated the initial complaint in the first place. In this case, having been the object of discriminatory conduct by Comcast, LBI had no choice but to elect must-carry to ensure it would be distributed in relevant markets. This decision does not impact the merits of LBI's complaint nor tie the hands of the Commission in granting LBI's requested relief.

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<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *Radio Perry, Inc. (WPGA-TV, Perry, Georgia) v. Cox Communications, Inc., Memorandum Opinion and Order*, 26 FCC Rcd. 16392, 16395 ¶ 6 (2011) ("*Radio Perry II*") (Broadcaster "WPGA can not [sic] 'unring the election bell.>"). But even this limited restriction on unilateral changes in election status by broadcasters is not absolute. *See, e.g.*, 47 C.F.R. § 76.64(f)(5) (a broadcaster may make a mid-cycle must-carry election if the FCC modifies the broadcaster's market for must-carry purposes).

<sup>10</sup> *Id.* ¶¶ 7-8; *see Radio Perry, Inc. (WPGA-TV, Perry, Georgia) v. Cox Communications, Inc., Memorandum Opinion and Order*, 25 FCC Rcd. 9110, 9113 ¶ 9 (2010) ("Our rules do not prohibit stations that have elected or defaulted to must-carry from making side agreements with cable operators that can effect [sic] the terms of their carriage.").

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Please do not hesitate to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Erickson', with a horizontal line drawn underneath the signature.

Markham C. Erickson

*Counsel for Liberman Broadcasting, Inc.  
and LBI Media, Inc.*

cc (via email): MaryBeth Murphy (MB)  
Martha Heller (MB)  
Raelynn Remy (MB)  
Susan Aaron (OGC)  
Michael Hurwitz (Willkie Farr & Gallagher LLP)  
Jay Cohen (Paul, Weiss, Rifkind, Wharton & Garrison LLP)

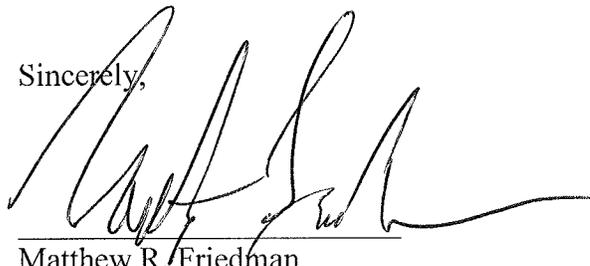
## CERTIFICATE OF SERVICE

I, Matthew R. Friedman, hereby certify that on this 11th day of October, 2017, I caused a true and correct copy of the foregoing, filed with the Commission by hand and electronically this day, to be served upon the following:

Jay Cohen (by email)  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064

Michael D. Hurwitz (by overnight delivery and email)  
Willkie Farr & Gallagher LLP  
1875 K Street, NW  
Washington, DC 20006-1238

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew R. Friedman', written over a horizontal line.

Matthew R. Friedman  
Steptoe & Johnson LLP