



## BACKGROUND ON PETITION FOR RECONSIDERATION NOT FOR ATTRIBUTION

### **Liberman Broadcasting’s September 26 Petition for Reconsideration of the FCC Order Dismissing its Program Carriage Complaint Against Comcast Argues the Media Bureau’s Conclusion that LBI is Not a “Video Programming Vendor” is Incorrect as a Matter of Law**

*On April 8, Liberman Broadcasting, Inc. (LBI) filed a Program Carriage complaint against Comcast with the Federal Communications Commission (FCC). The FCC Media Bureau dismissed the complaint on August 26 on standing. This document serves as a resource to learn more about LBI’s publicly available September 26 Petition for Reconsideration.*

**The FCC Media Bureau, in its dismissal of LBI’s complaint on standing, came to a conclusion that is contrary to the plain meaning of “video programming vendor,”** which incorporates the statutorily defined term “video programming.” The Media Bureau ignored the definition of “video programming” in its entirety.

*Excerpt from Liberman Broadcasting’s September 26 Petition for Reconsideration:*

- **Pages 4-5:** “In section 602, Congress unambiguously defined the term “video programming” as “programming provided by...a television broadcast station.” Section 616 uses this defined term. Therefore, the term “video programming vendor” in section 616 must be read as “a person engaged in the production, creation, or wholesale distribution of [, among things, programming provided by a television broadcast station].” By finding that the “better reading” of “video programming vendor” excludes a television broadcast station, the Bureau unlawfully *excluded* the specifically defined term “video programming.” But the Bureau—indeed the Commission—lacks the authority to substitute its “better reading” for the plain meaning of the statute. Under *Chevron*, the Bureau “must give effect to the unambiguously expressed intent of Congress” and therefore may not “read out” broadcasters from the definition of “video programming vendor.”

**The FCC Media Bureau ignored a critical Commission precedent** – a report to Congress submitted shortly after the passage of the 1992 Cable Act which stated that broadcasters are “video programming vendors.” The bureau, in its dismissal of LBI’s complaint, came to the opposite conclusion of the Commission, acting outside of its delegated authority and ignoring Commission precedent.

*Excerpt from Liberman Broadcasting’s September 26 Petition for Reconsideration:*

- **Pages 8-9:** “The Order also errs by rejecting and even ignoring Commission precedent that squarely addresses the question of whether a television broadcast station is a video programming vendor under section 616. Shortly after the passage of the 1992 Cable Act, the Commission found in its report to Congress that “video programming vendor” includes a television broadcast station:

*[T]he term ‘video programming vendor’ refers to any provider of video programming, not just cable entities, and therefore includes a broadcast network....*

In making this finding, the Commission explicitly relied on the statute’s reference to “video programming vendors,” without further categorization, to support its interpretation, and explicitly rejected the conclusion that legislative history suggested a more narrow interpretation. The Commission



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affirmed this conclusion in its Final Report. Acting under delegated authority, the Bureau must apply established Commission policy and precedent. It certainly cannot reverse it. Such failure is grounds for reconsideration.”

**LBI has made a prima facie case in its complaint of a violation of Section 616 by Comcast** and LBI has demonstrated standing to bring the complaint against Comcast under the terms of the FCC’s Comcast-NBCUniversal order. LBI is entitled to the remedies made available in that order.

- **Pages 8-9:** “The Bureau found that LBI failed to demonstrate standing to bring a program carriage complaint under the *Comcast-NBCU Order* for “substantially the same reasons” as in the section 616 context. As the Bureau noted, the definition of “video programming vendor” in the *Comcast-NBCU Order* is identical to the definition in section 616(b). Thus, the plain meaning of “video programming vendor,” and Commission precedent, as discussed above, supports a finding of standing for LBI to bring a complaint under the *Comcast-NBCU Order* on reconsideration. This means that LBI is entitled to a corresponding benefit of the remedies made available under those procedures. Under the *Comcast-NBCU Order*, an aggrieved vendor is required only to show that it was discriminated against on the basis of its affiliation or non-affiliation and does not have to prove that it was unreasonably restrained from competition.”

### **About Liberman Broadcasting, Inc.:**

Liberman Broadcasting is a leading Spanish-language, family-owned broadcasting company that operates Estrella TV, one of America’s most popular and fastest-growing Hispanic television networks. Launched in 2009, Estrella TV has grown to include 37 broadcast affiliates and built a catalog of more than 7,500 hours of programming now being distributed by the company worldwide. Estrella TV offers a unique aggregation of Spanish-language programming - including national and local news shows, political shows, sports, variety, talk, reality, drama, music, and comedy programming – primarily produced in Liberman Broadcasting’s Burbank, CA headquarters by an overwhelmingly Hispanic workforce.