



BACKGROUND ON REPLY COMMENTS ON PROGRAM CARRIAGE COMPLAINT NOT FOR ATTRIBUTION

Liber Broadcasting June 27 Reply to Comcast Outlines Clear Case for Full FCC Hearing on Program Carriage Complaint; Makes Clear that Comcast’s Answer Lacks Merit

On April 8, 2016, Liberman Broadcasting, Inc. (LBI) filed a Program Carriage complaint against Comcast with the Federal Communications Commission (FCC). Comcast filed its Answer with the FCC on June 7 and LBI replied yesterday, June 27. This document serves as a resource to learn more about LBI’s complaint against Comcast’s unlawful actions, with key excerpts from LBI’s publicly available June 27 [filing](#) included below.

LBI clearly has legal standing to bring a program carriage complaint against Comcast. LBI meets all three components of the definition of Video Program Vendor, even though it needs to meet only one: LBI produces, creates, and distributes on a wholesale basis video programming for sale. Estrella TV produces approximately 75 percent of its own programming at its California studios and markets and distributes that programming throughout the United States by means of LBI-owned and operated broadcast stations, third party-owned broadcast affiliates, and cable and satellite MVPDs.

Excerpts from Liberman Broadcasting’s June 27 Reply:

- **Page 2:** “Comcast ineffectually tries to rewrite the statutory definition of video programming vendor (“VPV”) to mean only “cable network,” excluding broadcasters per se. In fact, LBI is a classic VPV in all aspects of the definition and relevant precedent. It produces, creates, and distributes video programming for sale to a wide variety of MVPDs and affiliates.”

In violation of the program carriage rules, Comcast unlawfully required that LBI relinquish the digital rights to its own content as a condition for carriage. These rights are very valuable as Liberman Broadcasting controls the universal rights to its catalog of more than 7,500 hours of programming, which allow it to be distributed across all platforms.

Excerpts from Liberman Broadcasting’s June 27 Reply:

- **Page 2:** “Comcast ineffectually tries to rewrite Section 616’s prohibition on an MVPD requiring a financial interest in VPV programming as a condition of carriage, so that “financial interest” would mean only “ownership interest” and broadband feeds and video on demand (“VOD”) libraries would be treated as lacking independent value. In fact, during the Discussion Period, Comcast consistently required that, if LBI wanted a retransmission consent agreement from Comcast for basic carriage on Comcast’s cable systems (with no compensation therefor), LBI would also need to provide Comcast with a financial interest in the increasingly valuable broadband feed and VOD rights *LBI* possesses in the programming *it* produces.”

Evidence of demand for Estrella TV is abundant. Nielsen ratings are the universally accepted methodology for assessing customer demand for a TV network. In this case, the fairest way to evaluate Estrella TV is to look at its Nielsen ratings in those markets where it has roughly equal distribution parity with its competitors, including Telemundo and NBC Universo. Examples of such markets include LA (the nation’s largest and most competitive market for Spanish-language programming), as well as Dallas-Ft. Worth, a top-five Hispanic market. In those apples-to-apples markets the record is clear: Estrella TV’s ratings in a key demo during May and November 2015 sweeps periods beat or rival Telemundo in LA and Dallas – and nationwide, Estrella far outperforms NBC Universo.

Comcast’s treatment of Estrella TV does not reflect a rational commercial negotiation, as evidenced by distribution agreements Estrella TV has in place with every other major MVPD in the country. Only Comcast has refused to reach a fair deal to carry Estrella because only Comcast owns two competitor networks.

Excerpts from Liberman Broadcasting's June 27 Reply:

- **Page 3:** “In attempting to show that its denials of Estrella TV’s proposals during the course of this proceeding were nothing more than good faith, reasonable business decisions, Comcast proves the opposite... The facts in the Answer to which Comcast attests concerning NBC Universo *puncture* Comcast’s repeated protestations that LBI’s proposals for Estrella TV were completely out of step with reasonable good faith business considerations. Comcast itself has persuasively disproved an argument on which it repeatedly relies.”
- **Page 3-4:** “[Comcast’s] Answer fails to deal with key facts central to the Complaint (e.g., Estrella TV’s impressive ratings performance in multiple markets as measured by Nielsen over the May and November 2015 sweeps periods, Estrella TV’s value as recognized by a bevy of sophisticated, non-conflicted MVPDs and broadcast affiliate partners, and the discriminatory implications of Comcast’s Hispanic Channel Additions for Comcast’s dismissive treatment of Estrella TV’s much more popular programming). The Answer badly distorts other facts (e.g., by making a demonstrably inaccurate claim that Estrella TV is a “weak” ratings performer in the Los Angeles market).”
- **Page 20:** “Nielsen data drawn from a vital demographic group as measured in weekday evening prime time during May and November 2015 Nielsen sweeps periods, showing that when given fair and competitive MVPD distribution in large markets like Los Angeles and Dallas, the Nielsen ratings of Estrella TV programming exceed or closely rival those of Telemundo; Nielsen data drawn from the Houston and Denver markets that reinforce these conclusions; a showing that Estrella TV’s prime time daily newscasts consistently generate high Nielsen ratings; and data showing that Estrella TV’s performance in national ratings substantially exceed NBC Universo’s despite the national distribution advantages NBC Universo enjoys over Estrella TV.”

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.