

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

In the Matter of:)	
)	
Christian Faith Broadcast, Inc.)	
)	CSR-5506-M
v.)	
)	
Cablevision of Ohio)	
)	
Request for Mandatory Carriage of Television Station, WGGN-TV Sandusky, Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: June 2, 2000

Released: June 6, 2000

By the Acting Chief, Consumer Protection and Competition Division, Cable Services Bureau:

I. INTRODUCTION

1. Christian Faith Broadcast, Inc. ("CFBI"), licensee of television broadcast station WGGN-TV, Sandusky, Ohio ("WGGN" or the "Station"), has filed a must carry complaint asking that the Commission order Cablevision of Ohio ("Cablevision") to continue carriage of the WGGN signal on its cable system serving Sheffield Lake, Sheffield Village and Avon, Ohio ("cable communities") until the Station can provide a good quality signal to Cablevision's newly designated headend.¹ Cablevision filed an opposition to the above-referenced complaint.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Must Carry Order")*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹ The record indicates that WGGN provided a good quality signal to Cablevision's Sheffield headend since 1996, and that Cablevision carried WGGN until Cablevision moved its principal headend to Cleveland Heights, Ohio. Complaint at 2-3; Opposition at 1.

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, (continued...)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing is calculated.⁴

III. DISCUSSION

3. CFBI relates that on November 24, 1999, Cablevision notified WGGN that it would discontinue carriage of the Station's signal on January 31, 2000 because the Station did not deliver a good quality signal to Cablevision's newly designated principal headend in Cleveland Heights, Ohio.⁵ CFBI argues that the WGGN signal should not be discontinued on the system because the Station has mandatory carriage stemming from an earlier proceeding in which the Cable Services Bureau ("Bureau") ordered Cablevision to grant must carry status to WGGN on its Sheffield Lake system.⁶ Relying on this decision, CFBI contends that Cablevision should continue to carry the WGGN signal until the Station can provide a good quality signal to the newly designated headend.⁷ CFBI acknowledges that WGGN does not provide a good quality signal to Cablevision's Cleveland Heights, Ohio headend.⁸ CFBI contends that the Commission should order Cablevision to continue carrying WGGN from its former Sheffield headend until it qualifies for mandatory carriage on the Cleveland Heights headend.⁹ In support, CFBI cites *Sonshine Family Television, Inc. v. Suburban Cable TV* ("Sonshine Family") where according to CFBI, "the Bureau rejected the signal quality argument concerning the newly redesignated headend and ordered ... the cable system to commence carriage ... within 60 days of the release of [the Bureau's] Order."¹⁰ Finally, CFBI claims that Cablevision's decision to move its headend to Cleveland Heights is "unwarranted and appears to be a deliberate attempt by Cablevision to justify the non-carriage of WGGN."¹¹

(...continued from previous page)

commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided Arbitron's "Areas of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) ("Market Modification Final Report and Order").

⁴ For a more complete description of how counties are allocated, see Nielsen Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵ *Id.*

⁶ *Cablevision of Cleveland, L.P. v. Cable Inc., d/b/a Cablevision of Ohio* ("Cablevision of Cleveland"), 11 FCC Rcd 18034 (1996); Complaint at 3 and 5.

⁷ Complaint at 3 and Attachment 2

⁸ Complaint at 3.

⁹ Complaint at 6.

¹⁰ 1999 WL 717256 (F.C.C.); DA 99-1877 (C.S.B. rel. September 16, 1999). Complaint at 6.

¹¹ *Id.* at 4.

4. In opposition, Cablevision states that by letter dated September 22, 1999, WGGN submitted its must carry election for the period beginning January 1, 2000.¹² Cablevision notes that as a result of WGGN's election, on November 23, 1999, it conducted signal strength tests at its newly designated Cleveland Heights, Ohio headend.¹³ According to Cablevision, the tests revealed that WGGN did not deliver a good quality signal to its new principal headend and, thus, WGGN no longer qualifies for mandatory carriage.¹⁴ Cablevision states that it is willing to cooperate with WGGN's efforts to improve its signal. However, it should not be required to carry the signal of a television broadcast station presently unable to deliver a good quality signal to its principal headend.¹⁵ Cablevision cites two cases in support of its assertion that it is not required to carry WGGN unless the station has equipment in place and operational that will improve its signal. In *Tri-State Christian TV, Inc. v. Century Communications Corp.*, the Commission ordered a cable operator to commence carriage of a television broadcast station only after the broadcaster had obtained the additional equipment it needed to deliver a good quality signal to the system's principal headend.¹⁶ Further, in *Speer Communications Holdings Limited Partnership v. Rifkin & Associates*, a cable operator was ordered to commence mandatory carriage of a television broadcast station within a specific number of days after the broadcaster provided a good quality signal to the cable operator's principal headend.¹⁷ Cablevision notes that its Sheffield Lake headend is no longer a functional headend.¹⁸ Cablevision maintains that the relocation of its principal headend to Cleveland Heights headend is part of Cablevision's overall consolidation of headends in the Cleveland, Ohio metropolitan area, and not an attempt to avoid carriage of the WGGN signal.¹⁹

5. We disagree with CFBI's argument that Cablevision should continue to carry WGGN while the Station obtains and installs the equipment necessary to provide Cablevision with a good quality signal. CFBI's reliance on the Bureau's 1996 decision requiring carriage of WGGN is misplaced. The Bureau's directive requiring Cablevision to commence carriage of the WGGN signal on its systems serving Sheffield, Sheffield Lake and Avon, Ohio was premised on the fact that at the time the *Order* was adopted, WGGN qualified as a must carry station.²⁰ A station's must carry status depends on several factors and a station seeking must carry status must not only qualify to obtain it, but must also maintain such status through compliance with the Commission's must carry rules throughout the duration of the election period.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ Cablevision asserts that additional signal strength testing it conducted at the Cleveland Heights headend in January and February 2000 confirmed that WGGN does not meet the Commission's rules signal strength requirements. *Id.* at 2.

¹⁵ *Id.* at 5-6. Cablevision points out that Section 76.55 and Section 76.56 of the Commission's rules (47 C.F.R. § 76.55 and 47 C.F.R. § 76.56) require that television broadcast stations seeking mandatory carriage deliver a signal level of -45dBm for UHF signals or -49dBm for VHF signals. Or in the alternative, to deliver a good quality signal to the cable system's principal headend with specialized equipment, at the station's own expense. *Id.*

¹⁶ 11 FCC Rcd 5689, 5693 (1996).

¹⁷ 12 FCC Rcd 17488, 17491-92 (1997).

¹⁸ Opposition at Exhibit A.

¹⁹ Opposition at 2 and 8.

²⁰ *Cablevision of Cleveland*, 11 FCC Rcd at 18042-18043.

One of the factors that a station seeking mandatory carriage rights on a cable system must meet is that it must deliver a good quality signal to the cable operator's principal headend.²¹

6. The record indicates that WGGN delivered a good quality signal to Cablevision's principal headend from 1996 until the time Cablevision designated Cleveland Heights as its principal headend. Section 614 (a) of the Communications Act of 1934, as amended, clearly states that a UHF station does not qualify for mandatory carriage if it fails to deliver to the cable system's principal headend a signal level of -45 dBm at the input terminals of the signal processing equipment.²² CFBI's reliance on the Bureau's decision in *Sonshine Family* is incorrect. In that case, the Bureau ordered carriage of the television broadcast station only after finding that the cable operator failed to prove that the broadcaster did not deliver a good quality signal to the system's principal headend.²³ In this case, however, it is uncontested that WGGN is not able to deliver the required minimum strength signal to Cablevision's principal headend.²⁴ Contrary to WGGN's arguments, we cannot require Cablevision to accept the Station's signal at its Sheffield headend. In its *Clarification Order*, the Commission stated: "[a]s the statute specifies that a broadcast station must deliver a good quality signal to the principal headend of the cable system to be entitled to must carry rights, we clarify that the designated principal headend is the appropriate location for such measurement."²⁵ Therefore, we cannot order Cablevision to carry the WGGN signal from a headend that is neither the system's principal headend nor functional. Based on the foregoing, we conclude that WGGN is not entitled to continued carriage on the Cleveland Heights system while it awaits the specialized equipment it needs. We therefore deny this part of CFBI's complaint.

7. Section 614(h)(1)(B)(iii) of the Communications Act of 1934 and Section 76.55(c)(3) of the Commission's rules, provide an exception to the requirement that a station seeking must carry status must deliver a good quality over-the-air signal to the system's principal headend.²⁶ Pursuant to those provisions, a station's failure to deliver the requisite over-the-air signal quality will not foreclose its carriage if the station agrees to be responsible for the costs of delivering to the system's principal headend a good quality signal.²⁷ In the instant case, WGGN has offered to acquire and install all the equipment it needs to deliver a good quality signal to Cablevision's newly designated headend. As a result, we find that WGGN has satisfied the criteria for the exception to the carriage requirement discussed above. We therefore conditionally grant this part of CFBI's complaint.

8. Finally, concerning the issue of Cablevision's reasons for the recent designation of Cleveland Heights as its principal headend, the Commission, in its *Must Carry Order* stated that a cable operator may change its choice of principal headend only for good cause.²⁸ Cablevision maintains that the redesignation is part of its overall consolidation of headends in the Cleveland, Ohio metropolitan area, and to facilitate the upgrade of its systems, and not an attempt to avoid carriage of the WGGN signal. Without evidence to the contrary, Cablevision's representations lead us to conclude that its recent designation of

²¹ 47 C.F.R. § 76.55.

²² 47 U.S.C. § 534(h)(1)(B)(iii). *See also* 47 C.F.R. § 76.55(c)(3).

²³ *Sonshine Family*, 1999 WL 717256 (F.C.C.).

²⁴ Complaint at 3 and Attachments 1, 2 and 4; Opposition at 4 and Exhibit A.

²⁵ *Clarification Order*, 8 FCC Rcd at 4143.

²⁶ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3). *See Must Carry Order*, 8 FCC Rcd at 2991.

²⁷ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

²⁸ *Must Carry Order*, 8 FCC Rcd at 2968.

Cleveland Heights as its principal headend was made for good cause.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the complaint filed by Christian Faith Broadcast, Inc. **IS DENIED IN PART AND GRANTED IN PART**. Cablevision of Ohio **IS ORDERED** to commence carriage of television station WGGN-TV on its cable system serving Sheffield Lake, Sheffield Village and Avon, Ohio, within sixty (60) days from the date that station WGGN-TV delivers a good quality signal to its Cleveland Heights headend.

10. This action is taken pursuant to authority delegated under § 0.321 of the Commission's rules.²⁹

FEDERAL COMMUNICATION COMMISSION

Steven Broeckaert, Acting Chief
Consumer Protection and Competition Division
Cable Services Bureau

²⁹ 47 C.F.R. § 0.321.