

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

In the Matter of:)
Complaint of V-One Productions, Inc.)
Against Charter Cable) CSR-5529-M
Request for Carriage)

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 2000

Released: July 24, 2000

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

I. INTRODUCTION

1. V-One Productions, Inc., licensee of low power station WWCI-LP (Ch. 10), Vero Beach, Florida ("WWCI-LP"), has filed a must carry complaint against Charter Cable ("Charter"), for its failure to carry WWCI-LP on its system serving various communities in Indian River County, Florida.1 No opposition to this complaint has been received.

II. BACKGROUND

2. Section 614(a) of the Communications Act of 1934, as amended, requires the carriage of "qualified" low power television ("LPTV") stations in certain limited circumstances. Under Section 76.56(b)(3) of the Commission's rules, promulgated pursuant to Section 614, a cable system that has insufficient full power television stations to reach its channel set aside shall carry at least one qualified LPTV station.2 Thus, if a cable system is carrying its full complement of commercial full power stations, it need not carry an LPTV station. An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's rules will be considered "qualified" only if: 1) it broadcast for at least the minimum number of hours of operation required under 47 C.F.R. Part 73; 2) it adheres to Commission requirements regarding nonentertainment programming and employment practices and "the Commission determines that the provision of such programming by the station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power television station's community of license;"3 3) it complies with interference regulations consistent with its secondary status; 4)

1WWCI-LP states that these communities include, but are not limited to, Sebastian and other unincorporated areas of Indian River County.

247 C.F.R. §76.56(b)(3).

3Section 76.55(d)(2) of the rules provides that the LPTV station must meet "all obligations and requirements applicable to full power television broadcast stations under Part 73 of Title 47, Code Of Federal (continued....)

it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality;⁴ 5) the community of license of the station and the franchise area of the cable system are both located outside the largest 160 Metropolitan Statistical Areas ("MSAs") ranked by population, as determined by the Office of Management and Budget ("OMB") on June 30, 1990, and the population of the such community of license on that date did not exceed 35,000; and 6) there is no full power television broadcast station licensed to any community within the county, or other political subdivision (of a State) served by the cable system.⁵

III. DISCUSSION

3. In support of its request, WWCI-LP states that Charter's refusal to carry its signal is unwarranted because it meets all of the requirements of Section 76.55(d) of the Commission's rules to be a qualified LPTV station entitled to must carry. WWCI-LP states that it broadcasts 24 hours a day, 7 days a week and meets all of the obligations and requirements applicable to full power television stations. WWCI-LP also states that it is duly licensed pursuant to Part 74 of the Commission's rules and is in compliance with the Commission's interference rules and its transmitter is located within 35 miles of the principal headend for the cable system. Further, WWCI-LP states that not only are Vero Beach, its community of license, and Indian River County, the geographic area of the cable system, both located outside of the largest 160 MSAs, but there are no full power television stations licensed to any community in Indian River County.

4. WWCI-LP states that it requested carriage on Charter's system by letter dated January 11, 2000.⁶ WWCI-LP points out that, pursuant to Section 76.61(a)(2) of the Commission's rules, Charter was required to respond to this carriage request within thirty days, or no later than February 10, 2000.⁷ To date, WWCI-LP states that no response from Charter has been received. Therefore, it filed its must carry complaint within sixty days of the date on which Charter should have responded to its request for carriage.

5. We will grant WWCI-LP's complaint. We find that the un rebutted representations made by WWCI-LP demonstrate that it is a local low power television station qualified for carriage on Charter's cable system serving various communities in Indian River County, Florida. Under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market as a cable operator is not entitled to carriage.⁸ For must carry purposes, cable operators have the same burden with regard to low power television stations, such as WWCI-LP. Charter

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Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity. . ." 47 C.F.R. §76.55(d)(2).

⁴For purposes of this section, a good quality signal shall mean a signal level of -49 dBm for VHF signals and -45 dBm for UHF signals at the input terminals of the signal processing equipment, or a baseband video signal.

⁵47 C.F.R. §76.55(d).

⁶Complaint at Attachment 1.

⁷47 C.F.R. §76.61(a)(2).

⁸See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues, 8 FCC Rcd 2965, 2990 (1993) ("Must Carry Order").

did not file an opposition to WWCI-LP's must carry complaint. Therefore, Charter has not presented any evidence that WWCI-LP is not entitled to carriage on its system.

IV. ORDERING CLAUSES

6. 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 V-One Productions, Inc. **IS GRANTED**. Charter is ordered to commence carriage of WWCI-LP on its Indian River County system within sixty (60) days of the release date of this order.

7. **IT IS FURTHER ORDERED** that WWCI-LP shall notify Charter in writing of its carriage and channel position elections (§§76.56, 76.57, and 76.64(f) of the Commission's rules) within thirty (30) days of the release date of this order.

8. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.⁹

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein, Chief
Consumer Protection and Competition Division
Cable Services Bureau

⁹47 C.F.R. §0.321.