

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

In the Matter of:)	
)	
Comcast Cablevision of Mercer County, Inc.)	
)	File No. CSR-5466-M
Request for Order Pursuant to Section 76.57(a))	
and Section 76.61(a) of the Commission's rules)	
Directing Carriage of WFMZ-TV, Allentown, PA,)	
on Cable Channel 4 or 16 or Another Mutually)	
Agreeable Channel)	

ORDER ON RECONSIDERATION

Adopted: August 10, 2000

Released: August 15, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Maranatha Broadcasting Company, Inc. ("MBC"), licensee of UHF independent television broadcast station WFMZ-TV, Channel 69, Allentown, Pennsylvania, has filed a petition for reconsideration, pursuant to Section 405 of the Communications Act of 1934, as amended, ("Communications Act") and Section 1.106 of the Commission's rules,¹ seeking reconsideration of the Cable Services Bureau's *Memorandum Opinion and Order* in the above-captioned proceeding ("*Order*").² The Bureau's *Order* denied WFMZ-TV's complaint which sought to have the Bureau issue an order directing Comcast Cablevision of Mercer County, Inc. ("Comcast")³ to carry the signal of WFMZ-TV on Cable Channel 4 or 16 or another mutually agreeable channel. Comcast filed an opposition to WFMZ-TV's petition.

II. BACKGROUND

2. WFMZ-TV is a full-power television station licensed to Allentown, Pennsylvania, operating on Channel 69, and located in the Philadelphia designated market area ("DMA"). The Bureau denied WFMZ-TV's complaint stating that during the current election period from January 1, 2000 to December 31, 2002, a commercial broadcast station may elect carriage on its over-the-air channel, the channel on which the station was carried on July 19, 1985, or the channel on which the station was carried on January 1, 1992.⁴ The Bureau's *Order* also noted that the Act and the rules provide that a broadcast

¹ 47 U.S.C. § 405; 47 C.F.R. § 1.106.

² *Comcast Cablevision of Mercer County, Inc.*, 15 FCC Rcd 7260 (2000) ("*Order*").

³ Comcast is an operator of a cable television system operating in the communities of Ewing, Hopewell, Lawrence, Pennington, and Trenton, New Jersey. *Order* at 7260, n.2.

⁴ *Order* at 7263-64; 47 U.S.C. § 534(b)(6), 47 C.F.R. § 76.57(a).

station may be carried on any channel number mutually agreed upon by the station and the cable operator.⁵

The Bureau noted that WFMZ-TV was not carried by Comcast on either July 8, 1985 or January 1, 1992 and WFMZ-TV was limited to demanding channel positioning on Comcast only on its over-the-air broadcast channel or on a channel number that was mutually agreed upon by the station and the cable operator.⁶

3. During the preceding election period covering 1997-1999, Comcast and WFMZ-TV entered into negotiations for carriage of the station that included the consideration of carriage on Channel 30.⁷ Those negotiations were unsuccessful and WFMZ-TV was instead carried on Channel 69, the station's over-the-air broadcast channel.⁸ The Bureau's *Order* found that WFMZ-TV could not demand carriage on a different channel position from Channel 69 based on unsuccessful negotiations for carriage in a prior election period.⁹ The Bureau's *Order* concluded that unless WFMZ-TV and Comcast could decide on a mutually agreed upon channel position in this election period, WFMZ-TV was only entitled to carriage on Comcast's system on its over-the-air broadcast channel.¹⁰

III. DISCUSSION

4. For the reasons discussed below, WFMZ-TV's petition for reconsideration is denied. WFMZ-TV concedes that it does not have the right to insist on a new channel because earlier negotiations between the parties did not result in agreement.¹¹ WFMZ-TV objects to Comcast's unilateral refusal to negotiate in good faith, in response to the station's must carry election period for 2000-2002, for carriage of WFMZ-TV on Channel 4 or Channel 16 or another mutually agreed upon channel.¹² WFMZ-TV contends that the right under the Commission's rules to carriage on a mutually agreed upon channel is meaningless if the cable operator is under no obligation to engage in good faith negotiations.¹³

5. Comcast argues that WFMZ-TV does not allege that its current channel position on Comcast's system, its over-the-air broadcast channel, is improper.¹⁴ Rather, according to Comcast, WFMZ-TV claims that it did not agree to carriage on its broadcast channel and wants Comcast to carry it on another channel.¹⁵ Comcast argues that unless WFMZ-TV and Comcast can decide on a mutually agreed upon channel position in this election period, WFMZ-TV is only entitled to carriage on Comcast's system on its over-the-air broadcast channel.¹⁶ Comcast asserts that there is nothing in the

⁵ *Id.*; 47 U.S.C. § 534(b)(6), 47 C.F.R. § 76.57(c).

⁶ *Order* at 7264.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Petition at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ Comcast Opposition at 2.

¹⁵ *Id.*

¹⁶ *Id.*

Communications Act or the Commission's rules that confer upon WFMZ-TV a "right" to carriage on a different channel in these circumstances, outside the discretionary parameters of Section 614(b)(6) of the Communications Act, and there is no statutory good faith negotiation standard imposed upon the parties in these channel positioning disputes.¹⁷

6. The Bureau has previously addressed this type of channel positioning argument. It is not in dispute that WFMZ-TV, like other broadcast stations electing must carry status, have three channel options available: 1) a station may elect to be carried on its over-the-air channel; or 2) it may elect to be carried on the channel on which it was carried on July 19, 1985; or 3) it may elect to be carried on the channel on which it was carried on January 1, 1992.¹⁸ This dispute involves the provision, that in the alternative, the Communications Act and the Commission's rules provide that a broadcast station may be carried on such other channel number that is mutually agreed upon by the station and the cable operator.¹⁹ When interpreting this provision before, the Bureau has stated:

We read the 1992 Cable Act and the Commission's Rules to unambiguously state that there are three options – not four – available to a broadcaster. The language which allows cable operators and broadcasters to mutually agree upon a different channel is the mechanism by which the two may reach a channel positioning option outside of the three proposed by the 1992 Cable Act's provisions. It is simply a way of saying that the parties have the flexibility to reach a result different from the three statutory options. It does not, however, mean that in the event the three options are not available the parties must agree on the ultimate placement of the channel. To read this flexibility as a mandatory fourth option would totally obviate the prior three options as broadcasters would clash with other broadcasters in seeking what they viewed as a more favorable channel position, leaving the cable operator in the position of having to choose between competing broadcasters.²⁰

In the instant case, WFMZ-TV is only entitled to be carried on its over-the-air broadcast channel because it was not carried by Comcast on July 19, 1985 or on January 1, 1992. The fact that the parties have not been able to reach a mutually agreed upon alternative channel position in place of carriage on its over-the-air channel does not render Comcast's placement of WFMZ-TV on Channel 69 improper. There is nothing in the Communications Act or the Commission's rules that requires a cable operator to carry a broadcast station on another channel on its system if a station is only entitled to carriage on its over-the-air broadcast channel. With regard to the imposition of a good faith negotiation standard upon an attempt by the parties to come to a mutual agreement to place the broadcast station on an alternative channel, the plain language of Section 614 of the Communications Act does not incorporate such a standard.²¹

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed by Maranatha

¹⁷ *Id.* at 3-4.

¹⁸ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(a).

¹⁹ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(c).

²⁰ *Continental Cablevision of Sierra Valley, Inc.*, 10 FCC Rcd 958, 959 (1995); *see also Press Broadcasting, Inc.*, 9 FCC Rcd 4431, 4432 (1994).

²¹ 47 U.S.C. § 534.

Broadcasting Company, Inc., licensee of WFMZ-TV, regarding the denial of its complaint against Comcast Cablevision of Mercer County, Inc. **IS DENIED** pursuant to Section 405 of the Communications Act (47 U.S.C. § 405) and Section 1.106 of the Commission's rules (47 C.F.R. § 1.106).

8. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²² 47 C.F.R. § 0.321.