

<sup>1</sup>Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of:	)	
	)	
The Board of Education of the City of New York	)	
	)	CSR 5577-M
v.	)	
	)	
Service Electric Cable TV of New Jersey, Inc.	)	
	)	
For Carriage of WNYE-TV, New York, New York	)	
in Certain Communities in New Jersey	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 31, 2000**

**Released: November 2, 2000**

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

**I. INTRODUCTION**

1. The Board of Education of the City of New York (“Board”), licensee of non-commercial television station WNYE-TV, New York, New York (“WNYE”), filed a complaint pursuant to Section 614 of the Communications Act, as amended,<sup>2</sup> and Sections 76.7 and 76.61(b) of the Commission’s rules,<sup>3</sup> claiming entitlement to mandatory carriage of WNYE in certain communities in New Jersey served by Service Electric Cable TV of New Jersey, Inc. (“Service Electric”).<sup>4</sup> Service Electric filed an opposition to the complaint, and the Board filed a reply.

**II. BACKGROUND**

2. Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a television station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns.<sup>5</sup> Section 76.55(b) of the Commission’s rules defines a non-commercial educational (“NCE”) television station as any television broadcast station which is licensed by the Commission as an NCE

---

<sup>1</sup>

<sup>2</sup>47 U.S.C. § 534,

<sup>3</sup>47 C.F.R. §§76.7 & 76.61(a)

<sup>4</sup>Andover, Blairstown, Branchville, Bryam, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Hardyston, Hope, Jefferson, Knowlton, Lafayette, Newton, Ogdensburg, Sandystone, Sparta, Stillwater, Sussex, Vernon, and Wantage, New Jersey (the “Communities”).

<sup>5</sup>See 47 U.S.C. §534(h)(1)(C).

television broadcast station and which is owned and operated by a public agency, nonprofit foundation, corporation, or association, and has as its licensee an entity eligible to receive a community service grant from the Corporation for Public Broadcasting. A qualified local NCE television station is one that is licensed to a community whose reference point, as defined in Section 76.53 of the Commission's rules,<sup>6</sup> is within 80.45km (50 miles) of the principal headend of the cable system; or whose Grade B service contour encompasses the principal headend of the cable system.<sup>7</sup> A cable operator is not required to add the signal of a qualified local NCE television station not already carried under these provisions where such signal would be considered a distant signal for copyright purposes, unless such station agrees to indemnify the cable operator for any increased copyright liability resulting from carriage of such signal on the cable system.<sup>8</sup>

### III. DISCUSSION

3. The Board provided information establishing that WNYE is a non-commercial educational television station as defined in the Commission's rules licensed to New York, New York.<sup>9</sup> The Board also established that the community reference point for New York is located within 50 miles of the principal headend of Service Electric's cable system serving the Communities.<sup>10</sup> The Board asserts that WNYE is therefore qualified for mandatory carriage on Service Electric's cable system serving the Communities. The Board asserts that, despite repeated its efforts to obtain carriage, Service Electric has refused to provide carriage of WNYE on grounds that increased copyright liability would be incurred for such carriage in those communities partially or fully beyond the station's Grade B signal contour. The Board asserts that Service Electric has not provided an estimate of such potential increased copyright liability as required by the Commission nor has it provided any legally justifiable explanations for its refusal to carry WNYE on its cable system serving the Communities.<sup>11</sup> Accordingly, the Board requests an order for carriage of WNYE. Furthermore, the Board has made a commitment on the record that it intends to indemnify Service Electric for any additional copyright liability that Service Electric demonstrates, consistent with Commission requirements, would exist as a consequence of the carriage of WNYE.<sup>12</sup>

4. In cases where some of the communities, or portions of communities, served by a cable system are located beyond the station's Grade B signal contour<sup>13</sup> and the cable operator contends that carriage of the station at those locations would likely subject it to increased copyright liability with respect to such carriage of the station's copyrighted programming, the Commission has indicated that such circumstance does not relieve the cable operator of its mandatory carriage obligations with respect to such

---

<sup>6</sup>47 C.F.R. § 76.53.

<sup>7</sup>47 C.F.R. § 76.55(b).

<sup>8</sup>47 C.F.R. § 76.55(b)(3).

<sup>9</sup>Complaint at 1-3.

<sup>10</sup>Complaint at 3-5 & Attachment D. The Board also asserts that the Grade B signal contour of WNYE covers many of the Communities served by Service Electric. *Id.* & Attachment C.

<sup>11</sup>Complaint at 5-9.

<sup>12</sup>Reply at 7.

<sup>13</sup>The cable system principal headend is nonetheless within 50 miles of the station's community reference point.

station.<sup>14</sup> The mandatory carriage obligation in such cases remains in place, provided the cable operator receives a written commitment from the station for indemnification for such increased copyright liability.<sup>15</sup> The Commission has further indicated that the cable operator must in such circumstances provide the station with an estimate of the expected copyright liability, based on previous payments and financial information.<sup>16</sup>

5. We find that WNYE is a non-commercial educational television station as defined in the Commission's rules licensed to New York, New York.<sup>17</sup> The record also establishes that the community reference point for New York is located within 50 miles of the principal headend of Service Electric's cable system serving the Communities.<sup>18</sup> On this record and in view of the Board's commitment to indemnify Service Electric for any increase in copyright liability resulting from carriage of WNYE, we conclude that non-commercial station WNYE is entitled to mandatory carriage on Service Electric's cable system serving the Communities. Accordingly, we will order Service Electric to carry WNYE, subject to the provision that the Board indemnifies Service Electric for any increased copyright liability resulting from such carriage. Service Electric will also be required to provide the Board with an estimate of the expected copyright liability, based on previous payments and financial information.

6. Service Electric presented an argument to the effect that the Board's complaint should be dismissed as untimely filed.<sup>19</sup> We reject this argument. The Commission's rules concerning must carry complaint procedures for non-commercial educational stations, unlike that for commercial stations, contain no limitations on when a must carry complaint may be filed. Non-commercial educational stations may file a must carry complaint "whenever" the station "believes that a cable operator has failed to comply with the signal carriage or signal position requirements" of the Commission's rules.<sup>20</sup>

---

<sup>14</sup>See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2956, 2992-93 (1993); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Clarification Order, 8 FCC Rcd 4142, 4144-45 (1993); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Memorandum Opinion and Order, 9 FCC Rcd 6724, 6758-59 (1994).

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>Complaint at 1-3.

<sup>18</sup>Complaint at 3-5 & Attachment D. The Board also asserts that the Grade B signal contour of WNYE covers many of the Communities served by Service Electric. *Id.* & Attachment C.

<sup>19</sup>Opposition at 7-8.

<sup>20</sup>47 C. F. R. § 76.61(b).

**IV. ORDERING CLAUSES**

7. 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 The Board of Education of the City of New York in File No. CSR 5577-M **IS GRANTED**, and Service Electric Cable TV of New Jersey, Inc. shall commence carriage of television station WNYE(TV) on its cable systems serving the communities of Andover, Blairstown, Branchville, Bryam, Frankford, Franklin, Fredon, Green, Hamburg, Hampton, Hardyston, Hope, Jefferson, Knowlton, Lafayette, Newton, Ogdensburg, Sandystone, Sparta, Stillwater, Sussex, Vernon, and Wantage, New Jersey within sixty (60) days after the Board provides Service Electric with a written commitment to indemnify Service Electric for any increased copyright liability resulting from such carriage.

8. **IT FURTHER ORDERED** that Service Electric shall provide the Board with an estimate of the expected increased copyright liability from such carriage, based on previous payments and financial information.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.<sup>21</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>21</sup>47 C.F.R. § 0.321.