

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

In the Matter of:)	
)	
Central Ohio Association of Christian Broadcasters, Inc. v. Time Warner Cable)	CSR-5581-M
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: November 20, 2000

Released: November 22, 2000

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

I. INTRODUCTION

1. Central Ohio Association of Christian Broadcasters, Inc., licensee of low power television station WOCB-LP (Ch. 39), Marion, Ohio (“WOCB-LP”), has filed a must carry complaint against Time Warner Cable (“Time Warner”), for its failure to carry WOCB-LP on its cable systems serving the communities of Upper Sandusky, Bucyrus, Galion, Crestline, Mt. Gilead, and Forest, Ohio. Time Warner filed an opposition to this complaint to which WOCB-LP has replied.

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.¹ 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 broadcasts 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 lower power television station’s community of license;”² 3) it complies with interference regulations consistent with its secondary status; 4)

¹47 C.F.R. §76.56(b)(3).

²Section 76.55(d)(2) of the Commission’s 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 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).

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;³ 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 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.⁴

III. DISCUSSION

3. In support of its request, WOGB-LP states that by individual letters to each system, dated May 29, 2000, it requested carriage on the subject cable systems, advising Time Warner that it met all of the requirements to be considered a "qualified" LPTV station. To date, WOGB-LP states that it has received no response from Time Warner and it therefore requests that the Commission order Time Warner to commence carriage of its signal.

4. In opposition, Time Warner argues that WOGB-LP is not a "qualified" LPTV station and is therefore not entitled to carriage on any of its systems. Time Warner states that although WOGB-LP claims to meet all of qualifying criteria set forth in Section 76.55(d) of the rules, signal strength tests it conducted at its Fostoria, Bucyrus, Galion/Crestline, Mt. Gilead and Forest headends indicate that WOGB-LP fails to deliver a signal of good quality.⁵ Time Warner asserts that it followed sound engineering practices in conducting its tests and that all the results fell below the -45 dBm threshold for qualified UHF stations.⁶ As a result, Time Warner maintains that WOGB-LP is not qualified for must carry status on its cable systems and the complaint should be dismissed.

5. In reply, WOGB-LP argues that for the Bucyrus, Mt. Gilead and Galion/Crestline systems, the signal deficiencies noted by Time Warner in its signal strength tests can be corrected by the use of a Scala PR-TV antenna and LDF4 - 75 cable. WOGB-LP states that it will provide this equipment to Time Warner, thus restoring its must carry status with regard to these systems.

6. After a review of the information provided, we deny WOGB-LP's complaint in part and grant in part. Time Warner, using a Model Sky Phasor UHF antenna for the Fostoria headend, and a Model SA QUCA-UHF antenna for the remaining headends, determined that WOGB-LP's signal was below the requisite level of -45 dBm for a UHF station.⁷ For three of its headends, Time Warner took signal level readings of WOGB-LP's signal over a two-hour period. The range of results for these headends are as follows: Fostoria: between -74.65 dBm and -75.15 dBm; Galion/Crestline: between -55 dBm and -69 dBm; and Forest: between -73 dBm and -75 dBm. When measured against our criteria for sound engineering practices, we conclude that the technical determination reached by Time Warner for its

³For 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.

⁴47 C.F.R. §76.55(d).

⁵Time Warner states that the community of Upper Sandusky is now served by the headend located at Fostoria, Ohio.

⁶Opposition at 4.

⁷The tests for Fostoria, Forest and Mt. Gilead were conducted on August 28, 2000. The test for Bucyrus was conducted on August 29, 2000 and the test for Galion/Crestline conducted on August 30, 2000.

Fostoria, Galion/Crestline and Forest headends is sufficient to conclude that WOCB-LP fails to provide a signal of good quality to these systems. As a result, WOCB-LP's complaint with respect to systems will be denied.

7. For the Bucyrus and Mt. Gilead headends, however, Time Warner conducted its signal level readings over a 24-hour period, the results of which were -51/-64 dBm and -47/-55 dBm, respectively. The Commission's rules require that a cable operator must conduct multiple signal quality tests to ensure accurate results. Generally, if the test results are less than -51 dBm for a UHF station, we have said that at least four readings must be taken over a two-hour period. Where the initial readings are between -51 dBm and -45 dBm, inclusive, we believe that the readings should be taken over a 24-hour period with measurements not more than four hours apart to establish reliable results. In this case, Time Warner did not sufficiently cover the 24-hour period to establish reliable test results for the Bucyrus and Mt. Gilead headends. As a result, we cannot conclude that Time Warner has demonstrated that delivery of WOCB-LP's signal to these headends is not of good quality. WOCB-LP's complaint with respect to these systems, therefore, will be granted.

8. Finally, we note that in its reply, WOCB-LP offered to provide specific equipment to Time Warner in order to correct its apparent signal deficiency with regard to the Bucyrus, Mt. Gilead and Galion/Crestline cable systems. However, the provisions of Section 614(h)(B)(iii) of the Act, allowing television broadcast stations to provide equipment to improve their signal, do not apply to LPTV stations.⁸ Therefore, WOCB-LP's offer of additional equipment to improve its signal cannot be accepted.

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 portion of the complaint filed by Central Ohio Christian Broadcasters, Inc. with respect to the communities of Upper Sandusky, Galion, Crestline and Forest, Ohio **IS DENIED**.

10. **IT IS FURTHER ORDERED**, that the portion of the complaint filed by Central Ohio Christian Broadcasters, Inc. with respect to the communities of Bucyrus and Mt. Gilead, Ohio **IS GRANTED** pursuant to Section 614 of the Communications Act of 1934 as amended (47 U.S.C. §534), and Time Warner Cable **IS ORDERED** to commence carriage of WOCB-LP within sixty (60) days of the release date of this order unless Time Warner provides within fifteen (15) days of the release date an engineering showing substantiating its claim of poor signal quality with respect to these cable systems.

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

FEDERAL COMMUNICATIONS COMMISSION

Deborah Klein, Chief
Consumer Protection and Competition Division

⁸47 U.S.C. §534(h)(B)(iii). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues, 8 FCC Rcd 2965, 2991 (1993) ("Must Carry Order").

⁹47 C.F.R. §0.321.

Cable Services Bureau