

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

In the Matter of:)	
)	
Complaint of Bruno-Goodworth Network, Inc.)	
v. AT&T Broadband & Internet Services)	CSR-5447-M
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: February 24, 2000

Released: February 28, 2000

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

I. INTRODUCTION

1. Bruno-Goodworth Network, Inc., licensee of low power station W66BQ (Ch. 66), Beaver, Pennsylvania ("W66BQ"), has filed a must carry complaint against AT&T Broadband & Internet Services ("AT&T"), for its failure to carry W66BQ on its systems serving Columbiana County, Ohio, Beaver County, Pennsylvania, and Brooke and Hancock Counties, West Virginia.¹ An opposition to this petition was filed on behalf of AT&T to which W66BQ 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.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 broadcasts for at least the minimum number of hours of operation required under 47 C.F.R. Part 73; 2) it adheres to

¹AT&T's Columbiana County, Ohio system serves the communities of Minerva, Columbiana, Fairfield, Leetonia, Middleton Township, Negley, New Waterford, Salem, Unity, Unity Township, and Washingtonville, and surrounding unincorporated areas of Columbiana County, Ohio (the "Minerva system"). The Beaver County, Pennsylvania cable system serves the communities of Chippewa Township, Daugherty Township, Eastvale, Fallston, New Brighton, Patterson Heights, Patterson Township, Pulaski Township, West Mayfield, White Township, and surrounding unincorporated areas of Beaver County, Pennsylvania (the "Beaver Falls system"). The Brooke and Hancock, West Virginia cable system serves the communities of Weirton, New Cumberland, New Manchester, Lawrenceville, Newell, Chester, and surrounding unincorporated areas of Brooke and Hancock Counties, West Virginia (the "Weirton system").

²47 C.F.R. §76.56(b)(3).

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 low power television station's community of license;"³ 3) it complies with interference regulations consistent with its secondary status; 4) 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 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, W66BQ argues that AT&T'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. W66BQ 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. W66BQ 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. W66BQ submits that its transmitter is located within 35 miles of the principal headends of the cable systems. W66BQ also states that Columbiana County, Ohio, Beaver County, Pennsylvania, and Brooke and Hancock Counties, West Virginia, the geographic areas of the cable systems, and Beaver, Pennsylvania, W66BQ's city of license, are located outside of the largest 160 MSAs, and there are no full power television stations licensed to any community in these counties.⁶

4. W66BQ notes that a preliminary response from AT&T to its requests for carriage indicated that AT&T was considering W66BQ's requests.⁷ W66BQ states, however, that subsequent letters from AT&T advised W66BQ that it did not have the channel capacity to carry the station on its

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 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. 47 C.F.R. §76.55(d), Note to Paragraph.

⁵47 C.F.R. §76.55(d).

⁶W66BQ points out that according to 1990 MSA information from the U.S. Census Bureau's website, Beaver County is separate from the Pittsburgh MSA and is listed, according to the MSA rankings, as the 201st MSA in the nation. Complaint at Attachment 6.

⁷Complaint at 3.

systems at that time.⁸ W66BQ points out that, despite AT&T's allegations, all of AT&T's cable systems have sufficient channel capacity to carry its signal.⁹ W66BQ concludes that because it has made proper carriage requests for each of AT&T's systems and met the statutory and regulatory qualifications for carriage, the Commission should require AT&T to commence carriage of its signal.

5. In opposition, AT&T argues that it is not required to accommodate W66BQ because the station is not a "qualified" LPTV station. First, AT&T points out that W66BQ's city of license is located within the 19th largest MSA (Pittsburgh). AT&T argues that the Commission's rules require that the community of license of the station and the franchise area of the cable system both be located outside of the 160 largest MSAs. AT&T maintains that W66BQ misinterprets the 1990 MSA definitions it cites and that contrary to its suggestion, OMB's ranking did not separately identify Primary Metropolitan Statistical Areas ("PMSAs") like Beaver County which were encompassed by a larger Consolidated Metropolitan Statistical Area ("CMSA") like Pittsburgh. Indeed, AT&T points out that the Bureau has previously rejected the identical argument in its decision in *WFXV-TV, Inc. v. United Cablevision of Southern Illinois, Inc., d/b/a TCI of Illinois*.¹⁰ Second, AT&T states that for at least one of the cable systems, Minerva, Ohio, W66BQ is not located within 35 miles of the principal headend as required by Section 76.55(d)(4) of the Commission's rules.¹¹ Third, AT&T maintains that preliminary signal strength tests indicate that W66BQ does not provide a good quality signal to the individual cable systems.¹² Fourth, AT&T states that W66BQ has failed to meet its burden of proving that it consistently broadcasts local news and informational programming not addressed by other full power stations which the systems currently carry. Finally, AT&T argues that it is not clear whether W66BQ adheres to the Commission's requirements with regard to children's programming as required by Section 73.671 of the rules.¹³ In light of the above, AT&T contends that W66BQ's complaint should be dismissed.

6. W66BQ argues in reply that it does not believe that the Bureau's decision in *WFXV-TV* is relevant to its complaint herein because the language in that case does not go into detail as to the documentation that supports the Bureau's conclusion. Moreover, W66BQ maintains that AT&T's signal measurements cannot be determinative since the tests apparently used antennas which were not cut for W66BQ's specific wavelength. Even if determined to be accurate, however, W66BQ states that the complaint should be denied only with respect to the specific communities mentioned in the tests and not for all of the communities requested. Finally, W66BQ asserts that AT&T has failed to provide the relevant information to prove that W66BQ does not provide adequate local or children's programming.

7. Contrary to W66BQ's contention, we find that it is not a fully-qualified LPTV station and deny its request. Section 76.55(d)(5) of the Commission's rules requires that the community of license of the LPTV station and the franchise area of the cable system both be located outside of the largest 160 MSAs. In this instance, W66BQ's city of license, Beaver, Pennsylvania, is located in the Beaver County PMSA, which is considered to be part of the Pittsburgh-Beaver Valley, Pennsylvania

⁸*Id.*

⁹Complaint at 6-7.

¹⁰13 FCC Rcd 1870 (1997).

¹¹Complaint at Exhibit 4. 47 C.F.R. §76.55(d)(4).

¹²Complaint at Exhibit 5.

¹³47 C.F.R. §73.671.

CMSA. A CMSA is defined by OMB as a "Level A" MSA in which two or more PMSAs have been identified. While OMB does have separate definitions for MSAs, PMSAs, and CMSAs, they are interrelated concepts. As a result, Beaver, Pennsylvania is considered to be located within the 160 largest MSAs and does not qualify for carriage on AT&T's cable systems serving Columbiana County, Ohio, Beaver County, Pennsylvania, and Brooke and Hancock Counties, West Virginia. In view of the above, we need not address the other issues raised with regard to W66BQ's qualifications.

IV. ORDERING CLAUSES

8. 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 Bruno-Goodworth Network, Inc. **IS DENIED**.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴47 C.F.R. §0.321.