

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

In the Matter of:)	
)	
West Coast Christian Television, Inc.)	
)	CSR 5463-M
v.)	
)	
Adelphia Cable)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 2, 2000

Released: March 6, 2000

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

I. INTRODUCTION

1. West Coast Christian Television, Inc. ("West Coast"), licensee of commercial television station WRXY-TV 49 ("WRXY" or the "Station"), Tice, Florida filed a complaint pursuant to Sections 76.7 and 76.61 of the Commission's rules claiming mandatory carriage rights for WRXY on Telesat Acquisition Limited Partnership, d/b/a Adelphia Cable Communications ("Adelphia") cable systems serving the Fort Myers-Naples designated market area ("cable communities").¹ Adelphia filed an opposition to the complaint, and West Coast filed a reply. Adelphia filed a supplement to its opposition that included a more recent signal strength test, and West Coast filed a reply.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and the implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order ("*Must Carry Order*"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielson Media Research.³ A

¹47 C.F.R. § 76.7 and 47 C.F.R. § 76.61.

²8 FCC Rcd 2965, 2976-2977 (1993).

³Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a 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. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) provided that until Jan. 1, 2000, the television market to be used to implement the mandatory carriage rules are the "areas of dominant influence" or ADIs published in the Arbitron audience research organization's 1991-1992 Television Market Guide. Section 76.55(e) requires that effective January 1, 2000, a commercial broadcast television station's market shall be defined by DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their election based on DMAs. See *Definition of Markets for Purposes of the Cable Television* (continued....)

DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing.

3. Pursuant to 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 is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under our rules a station may provide a cable operator with specialized equipment, at the station's expense, which will improve the station's signal to an acceptable quality at a cable system's principal headend.⁶

III. DISCUSSION

4. In its complaint, West Coast asserts that Adelphia has failed to carry WRXY despite the requirements of the must carry statutory provisions and the Commission's rules. West Coast included with its complaint copies of correspondence with Adelphia showing that West Coast requested carriage of WRXY on the cable systems serving the cable communities at issue here.⁷ West Coast submits that it received a response to its request for carriage in which Adelphia stated it would not carry WRXY because it failed to meet the standards for delivery of a good quality signal to the cable system's principal headends serving Okeechobee, Lakeport, Ortona, Moorehaven and Clewiston.⁸ Other correspondence from West Coast to Adelphia states that should the cable operator be unable to receive a quality signal off-air from WRXY, it is committed to purchasing the requisite equipment necessary to ensure the deliver a good quality signal to all of Adelphia's cable systems.⁹ West Coast asserts that WRXY's television market is within the Fort Myers-Naples DMA as are the communities served by Adelphia's principal headends in Moorehaven, Ortona, Lakeport and Clewiston.¹⁰ West Coast also asserts that Adelphia's Okeechobee headend may serve portions of Glades County that are also within WRXY's television market.¹¹

5. Citing its own signal measurement survey, Adelphia contends that the complaint should be dismissed because WRXY does not deliver a signal of sufficient strength its headends in Okeechobee,

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Broadcast Signal Carriage Rules, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999).

⁴*Must Carry Order*, 8 FCC Rcd at 2990.

⁵47 C.F.R. § 76.55(c)(3).

⁶*Must Carry Order*, 8 FCC Rcd at 2991.

⁷West Coast Complaint at Exhibit A.

⁸*Id.* at Exhibit B.

⁹*Id.*

¹⁰*Id.* at 1

¹¹*Id.*

Moorehaven, Ortona, Lakeport and Clewiston.¹² In reply, West Coast restates its commitment to install all equipment necessary to deliver a good quality WRXY signal to the cable systems.¹³ Further, West Coast contends that following discussions with Adelphia's engineer, it has ordered, paid for and received specialized antennas and pre-amps, has sent notice to Adelphia, and is awaiting word on a date when the antennas and other equipment can be installed.¹⁴

6. The complaint establishes that WRXY and Adelphia's cable systems at issue serve the Fort Myers-Naples DMA. Accordingly, we find that WRXY is a local television station qualified under the provisions of 47 C.F.R. § 76.55(c) for carriage on Adelphia's cable systems, provided it delivers a good quality signal to those cable system headends.

7. We find, however, that WRXY fails to provide a good quality signal to the headends of Adelphia's cable systems at issue. The Commission's signal strength rules require that a UHF television broadcast station such as WRXY deliver to the cable operator's principal headend a signal of -45dBm.¹⁵ The signal strength survey results provided by Adelphia show an inadequate signal strength level at every location tested.

8. Although WRXY fails to provide a good quality signal to the headends of Adelphia's cable systems, West Coast has made a commitment to acquire and install any and all improvements and equipment necessary to deliver a good quality WRXY signal to the cable headends. The Commission stated in the *Must Carry Order* that

[I]t is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend. This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements. . .¹⁶

Thus, we grant West Coast's must carry complaint against Adelphia conditioned upon WRXY delivering a good quality signal to Adelphia's headends.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.55(c) and 76.61 (a)(2) of the Commission's rules, 47 C.F.R. §§ 76.55(c)(3) and 76.61(a)(2), the Petition for Special Relief [CSR-5463-M] filed by West Coast Christian Television, Inc. against Telesat Acquisition Limited Partnership, d/b/a Adelphia Cable Communications **IS GRANTED**.

¹²Adelphia Supplement to Opposition at Exhibit A.

¹³*Id.* at 2.

¹⁴West Coast Supplemented Reply at 2.

¹⁵47 C.F.R. § 76.55(c).

¹⁶*Must Carry Order*, 8 FCC Rcd at 2991.

10. **IT IS FURTHER ORDERED** that Adelphia **SHALL COMMENCE CARRIAGE** of the signal, WRXY-TV, within sixty (60) days from the date that WRXY provides a good quality signal at Adelphia's principal headends serving the Fort Myers-Naples DMA. WRXY shall notify Adelphia in writing of its carriage and channel position elections on Adelphia's cable systems served by those principal headends within 30 days of providing a good quality signal, 47 C.F.R. §§ 76.56, 76.57 and 76.64(f) of the Commission's rules.

11. This action is taken pursuant to authority delegated by § 0.321, 47 C.F.R. § 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

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