

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

In the Matter of:)	
)	
McLaughlin Broadcasting, Inc.)	
)	CSR 5182-M
v.)	
)	
Winnsboro Cable TV)	
)	
Request for Carriage of WHQB)	
Sumter, South Carolina)	

ORDER ON RECONSIDERATION

Adopted: March 27, 2000

Released: March 30, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Winnsboro Cable TV ("Winnsboro"), operator of a cable television system serving Fairfield, South Carolina, and surrounding areas, filed a Petition for Reconsideration requesting that the Cable Services Bureau's *Order* ("*Bureau Order*") granting must carry status to television broadcast station WQHB ("WQHB" or the "Station") be modified to condition such carriage on WQHB's ability to provide a good quality signal to Winnsboro's principal headend.¹ McLaughlin Broadcasting Inc. ("MBI"), licensee of station WQHB (Channel 63), Sumter, South Carolina, filed an opposition to the petition to which Winnsboro replied.

II. BACKGROUND

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

¹ *McLaughlin Broadcasting, Inc. v. Winnsboro Cable TV* ("*McLaughlin Broadcasting*"), FCC Rcd 7133 (1998).

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 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. § (continued...)

market exclusively of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive the preponderance of total viewing hours in the county. For purposes of this calculation, both the over-the-air and cable television viewing are included.⁴

III. DISCUSSION

3. In its initial filing in this proceeding, MBI filed a must carry complaint against Winnsboro for that cable operator's failure to carry WQHB on its system serving Fairfield, South Carolina, and surrounding areas.⁵ In opposition, Winnsboro argued that MBI's complaint should have been denied because WQHB failed to deliver a good quality signal to Winnsboro's headend.⁶ In reply, MBI argued that the signal strength tests MBI submitted had not been conducted in accordance with sound engineering practices as required by the Commission's rules.⁷ In its decision, the Bureau agreed with MBI and concluded that Winnsboro submitted signal strength studies that failed to comply with the Commission's requirements for use of sound engineering practices and that, therefore, the tests were insufficient to demonstrate that WQHB's signal was not of good quality.⁸ As a result, the Bureau found that WQHB is a qualified UHF station that is entitled to carriage on Winnsboro's Fairfield, South Carolina cable system.⁹

4. In the instant Petition, Winnsboro accepts that WQHB is entitled to mandatory carriage on its Fairfield, South Carolina system, and argues that Winnsboro should not be required to carry the Station if WQHB cannot deliver a good quality signal to the Fairfield headend.¹⁰ Winnsboro asserts that it will comply with its must carry obligations and launch WQHB, provided that WQHB does, in fact, provide a signal of sufficient strength and quality.¹¹ Winnsboro submitted recent signal strength tests which purport to confirm that WQHB does not currently provide a good quality signal to Winnsboro's

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534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided Arbitron's "Areas of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) ("Market Modification Final Report and Order").

⁴ For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵ *McLaughlin Broadcasting at 7139*.

⁶ *Id.* at 7140.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 7141.

¹⁰ Petition at 2. Winnsboro notes that WQHB is entitled to must carry status on the Fairfield cable system "by virtue of their common ADI assignments." *Id.*

¹¹ *Id.*

Fairfield headend.¹² Thus, Winnsboro requests that the *Bureau Order* be modified to order Winnsboro to carry the WQHB signal only after the Station can provide a good quality signal to the Fairfield, South Carolina headend.¹³

5. In opposition, WQHB argues that reconsideration of the *Bureau Order* is unnecessary. WQHB points out that the modification MBI requests would merely restate that carriage of WQHB is contingent upon the delivery of a good quality signal to Winnsboro's headend.¹⁴ WQHB argues that Winnsboro, instead of considering premature issues such as whether or not the Station is committed to providing specialized equipment, should be concerned about submitting signal strength tests that follow sound engineering practices to show that the WQHB signal is unusable or inadequate.¹⁵ WQHB states that, although Winnsboro has not met its burden to show that WQHB fails to provide an adequate signal to the cable system in question, it will provide special equipment for delivery of a good quality signal to the Fairfield headend should that prove to be necessary.¹⁶

6. In reply, Winnsboro points out that, in its Opposition, WQHB concedes that it must provide a good quality signal as a prerequisite to carriage.¹⁷ It also notes that WQHB does not dispute the recently submitted test results, which according to Winnsboro, demonstrate that WQHB clearly does not provide a signal of sufficient strength to the Winnsboro headend.¹⁸ Thus, Winnsboro argues, its Petition should be granted and the *Bureau Order* be modified to reflect the specific statutory requirements to require carriage of WQHB only after the Station can provide a good quality signal to the cable system's headend.¹⁹

7. The allegations previously raised by the parties and our discussion and analysis of the issues raised are fully addressed in the *Bureau Order* and need not be discussed here. The *Bureau Order* found that Winnsboro submitted signal strength studies that failed to show compliance with sound engineering practices. As a result, the Bureau concluded that WQHB was entitled to mandatory carriage because the tests were insufficient to demonstrate that WQHB's signal is not of good quality. In this regard, the Commission has stated that cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.²⁰ As noted in the *Bureau Order*, one method of doing so is for a cable operator to establish that a subject television station signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.²¹ In the earlier proceeding, Winnsboro failed to meet this burden. As a result the

¹² *Id.* at 1. The tests revealed readings ranging from -87.5 dBm to -85.2 dBm. Petition, Exhibit 1.

¹³ Petition at 2.

¹⁴ Opposition at 1.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 3.

¹⁷ Reply at 1.

¹⁸ *Id.*

¹⁹ *Id.* at 2-3.

²⁰ See *Must Carry Order* at 2990.

²¹ 47 C.F.R. § 76.55(c)(3).

Bureau Order placed no restrictions on the carriage of WQHB.²² In the instant proceeding, however, Winnsboro has submitted recent signal strength results showing that WQHB does not deliver a good quality signal to Winnsboro.²³ WQHB, however, has stated that it intends to provide specialized equipment that will improve its signal. As a result, we grant Winnsboro's Petition for Reconsideration and modify the *Bureau Order*. Winnsboro is therefore ordered to begin carriage of station WQHB when it provides a good quality signal to Winnsboro's Fairfield headend.²⁴

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed by Winnsboro Cable TV **IS GRANTED**. Winnsboro Cable TV **IS ORDERED** to commence carriage of television station WHQB on its cable system serving Fairfield, South Carolina, within sixty (60) days from the date that station WQHB delivers a good quality signal to Winnsboro's Fairfield headend.

9. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²² The fact that the *Bureau Order* placed no conditions on the carriage of WQHB, does not, in any way, exempt the Station from its obligation to either deliver a good quality over-the-air signal, or to acquire and install, at the Station's expense, any and all improvements and equipment that might be necessary to provide Winnsboro's Fairfield headend with a good quality signal.

²³ WQHB has agreed to be responsible for installing all specialized equipment necessary to deliver a good quality signal to Winnsboro's headend, serving Fairfield, South Carolina. Opposition at 3.

²⁴ Under the Commission's rules, a station's failure to provide the requisite over-the-air signal quality to a cable system's principal headend will not foreclose its carriage, if the station provides a cable operator with a specialized equipment, at the station's expense, that will improve the station's signal to an acceptable quality at a cable system's principal headend. *Must Carry Order* at 2992. See also 47 C.F.R. § 534(h)(1)(b)(iii).

²⁵ 47 C.F.R. § 0.321.