

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

In the Matter of: )
Channel 29 of Charleston, Inc. )
v. ) CSR-5663-M
Century Ohio Cable Television Corp., d/b/a )
Adelphia Cable Communications )
Request for Mandatory Carriage of Television )
Station WLPX-TV, Charleston, West Virginia )

MEMORANDUM OPINION AND ORDER

Adopted: July 10, 2001

Released: July 12, 2001

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

I. INTRODUCTION

1. Channel 29 of Charleston, Inc. ("Paxson"), licensee of commercial television station WLPX-TV, Channel 29, Charleston, West Virginia ("WLPX" or the "station") filed the above-captioned must carry complaint against Century Ohio Cable Television Corp., d/b/a Adelphia Cable Communications ("Adelphia"), for its failure to carry the signal of WLPX on its cable system serving Portsmouth, Ohio, and the surrounding environs.1 Adelphia filed an opposition to Paxson's complaint, and Paxson filed a reply.

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"), 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 Nielsen Media Research.3 A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

1 A list of the communities served by Adelphia's Portsmouth, Ohio, cable systems within the Charleston-Huntington DMA appears in Exhibit 1 of Paxson's Complaint.

2 8 FCC Rcd 2965, 2976-77 (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. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

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

### III. DISCUSSION

4. In support of its Complaint, WLPX states that it is licensed to Charleston, West Virginia, which is in the Charleston-Huntington DMA.<sup>7</sup> It states further that Adelphia operates a cable television system which is also within the Charleston-Huntington DMA.<sup>8</sup> WLPX contends that it is entitled to mandatory carriage on Adelphia's system because it is a "qualified local commercial television station" under the must carry rules. Specifically, WLPX claims that it meets the mandatory carriage requirement because: (1) the cable community and the station are located within the same DMA, and the station's signal will not cause increased copyright liability for the cable operator; and (2) Adelphia has not suggested at any time that the station fails to deliver a good quality signal to the system's principal headend.<sup>9</sup> WLPX states that, in a letter dated December 8, 2000, it requested carriage of the station on the Adelphia system serving Portsmouth, Ohio, and the surrounding environs.<sup>10</sup> WLPX asserts that Adelphia did not respond to its request for mandatory carriage within thirty (30) days of receipt of such request, in violation of Section 76.61(a)(2) of the Commission's rules.<sup>11</sup> WLPX acknowledges that Adelphia eventually responded to its request for carriage and stated, in a January 17, 2001 letter, that WLPX would not be carried due to potential consumer confusion, subscribers' complaints, and a delay in the rebuild of its system.<sup>12</sup> WLPX argues that the reasons Adelphia provided for not carrying the station have been rejected by the Commission in other similar cases.<sup>13</sup> WLPX asks the Commission to do the same in this instance, and to issue an order requiring Adelphia to commence carriage of the station on Channel 29 of the cable system serving the cable community.

5. In its Opposition, Adelphia contends that WLPX-TV is not entitled to carriage because the station does not provide a good quality signal to Adelphia's cable system.<sup>14</sup> Adelphia notes that Section 614(h)(1)(B)(iii) of the 1992 Cable Act specifically excludes from the definition of "local commercial television station" eligible for must carry status any station "that does not deliver to the

---

<sup>4</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>5</sup> 47 C.F.R. § 76.55(c)(3).

<sup>6</sup> See *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>7</sup> Complaint at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4-5 (citing *Mountain Broadcasting Corporation v. TKR Cable Company of Elizabeth*, 11 FCC Rcd 4772 (CSB 1996); *WLG-TV, Inc., Riverhead NY* (CSR-3903-M), DA 93-1365 (CSB 1993), *aff'd*, 9 FCC Rcd 6723 (1994); *Fouce Amusement Enterprises, Inc.*, 10 FCC Rcd 668 (1995)).

<sup>14</sup> Opposition at 1.

principal headend of a cable system . . . a signal level of -45 dBm for UHF signal . . . at the input terminals of the signal processing equipment.”<sup>15</sup> Adelphia asserts that test results it conducted in May 1999 demonstrated that “WLPX-TV failed to deliver a signal strength greater than -21.1 dBmV, which, converted to dBm, is nowhere near the Communications Act’s requirements of -45 dBm.”<sup>16</sup> Adelphia states that Adelphia system personnel were present when WLPX measured its signal at Adelphia’s headend on June 14, 2000, and that system personnel observed that WLPX-TV “failed to deliver a signal strength greater than 2.4 dBmV during this test, which also fails the Communications Act’s standards.”<sup>17</sup> Adelphia asserts that while WLPX-TV claims to meet the requirements for mandatory carriage, it never sent Adelphia documentation regarding signal measurements.<sup>18</sup>

6. Adelphia states that it measured WLPX’s signal strength on April 4, 2001, and again on April 6, April 7, and April 8, 2001.<sup>19</sup> Adelphia further states, “[a]s these results indicate, while WLPX achieved a signal strength that meets the threshold established by the Communications Act, WLPX’s picture quality was poor because of co-channel interference from adjacent channel WHCP (channel 30, Portsmouth, OH).”<sup>20</sup> Adelphia surmises that this result is likely due to the fact that WHCP’s signal strength is twice that of WLPX. Adelphia points out that the Commission’s rules and regulations make clear that it is the station’s responsibility to take the necessary steps to deliver a good quality signal, which would include curing this interference problem.<sup>21</sup> At the same time, Adelphia states it is “committed to cooperating with WLPX” to resolve the substandard signal quality problem.<sup>22</sup> Adelphia asserts that the Commission has previously denied must carry complaints on the issue of picture quality, where, as here, the signal strength level was adequate.<sup>23</sup> Adelphia argues that because Paxson did not previously agree to be responsible for the costs of delivering a good quality signal at Adelphia’s Portsmouth principal headend, and still has not agreed to do so, it had no basis for filing its Complaint in the first place. Adelphia asks the Commission to dismiss Paxson’s Complaint.

7. In reply, WLPX states that because Adelphia did not respond to its written request for carriage on the Portsmouth system, it was compelled to file a complaint with the Commission.<sup>24</sup> WLPX notes that Adelphia acknowledges that the signal strength tests Adelphia conducted in April demonstrated that “WLPX achieved a signal level that meet[s] the threshold established by the Communications Act.”<sup>25</sup> WLPX states that because Adelphia now informs the station that the recent signal strength tests, while adequate, still indicate that the station’s over-the-air signal is of “poor quality,” WLPX “agrees to be responsible for the costs of delivering a good quality signal to the system’s principal headend.”<sup>26</sup> WLPX

---

<sup>15</sup> *Id.* at 2 (citing 47 U.S.C. § 534(h)(1)(B)(iii) and 47 C.F.R. § 76.55(c)(3)).

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

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (citing *Must Carry Order*, 8 FCC Rcd at 2991).

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* (citing *WRNN-TV Associates Limited Partnership v. Cablevision Systems Corporation*, 13 FCC Rcd 12654 (CSB 1998); *Northwest Indiana Public Broadcasting, Inc. v. Continental Cablevision of Northern Illinois*, 12 FCC Rcd 4709 (CSB 1997)).

<sup>24</sup> Reply at 1.

<sup>25</sup> *Id.* at 2 (quoting Opposition at 3).

<sup>26</sup> *Id.* at 3.

points out that the Commission has previously held that, once the station is made aware of the insufficiency of its signal, the station's commitment to provide a good quality signal, even in its FCC pleadings, is sufficient to justify the Commission to order the cable operator to carry the station's signal.<sup>27</sup> WLPX thus asks the Commission to order Adelphia to commence carriage of WLPX upon the delivery of a good quality signal to the principal headend of Adelphia's system.<sup>28</sup>

8. Based on the record, we grant WLPX's request for mandatory carriage. As the complaint establishes, WLPX and the Communities served by Adelphia's cable systems are located within the same television market, namely the Charleston-Huntington DMA, and carriage of WLPX will not cause an increase in the cable system's copyright liability. Accordingly, we find that WLPX is a local television station qualified under the provisions of Section 76.55(c) of the Commission's rules for carriage on Adelphia's cable system at issue here, provided it delivers a good quality signal to the cable system's headend.

9. In this particular instance, Adelphia contends that WLPX is not eligible for carriage because it does not provide a good quality signal to the system's headend. Our review of the data submitted by Adelphia, however, is inadequate to demonstrate that WLPX delivers a poor quality signal to Adelphia's headend, because Adelphia failed to follow generally acceptable engineering practices when it measured WLPX's signal strength. As the Commission previously stated:

[C]able operators are expected to employ sound engineering measurement practices. Therefore, signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when the tests were done.<sup>29</sup>

Among other deficiencies, we note that Adelphia's signal strength survey did not include recent dates of calibration and did not indicate whether the antenna was properly oriented. As a result, we cannot conclude that Adelphia has proven that WLPX fails to achieve the minimum signal strength criteria established by the Commission. In any event, even if Adelphia exercised good engineering practices in conducting the signal strength tests and that the picture quality proved to be substandard as it alleges, we note that WLPX has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal.<sup>30</sup> Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet the signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.<sup>31</sup> As indicated in its reply, WLPX has made this commitment and, by doing so, will be eligible to be carried by Adelphia when it provides a signal which meets the Commission's signal strength criteria.

---

<sup>27</sup> *Id.* (citing *Hispanic Keys Broadcasting Corp. v. Adelphia Cable Partners, L.P. d/b/a Adelphia Communications*, 15 FCC Rcd 15061 (CSB 2000)).

<sup>28</sup> *Id.*

<sup>29</sup> *Channel 5 Public Broadcasting, Inc. v. WestStar Cable*, 8 FCC Rcd 4953, 4953 (CSB 1993). See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Clarification Order, 8 FCC Rcd 4142, 4143 (1993); *Mountain Broadcasting Corp.*, 10 FCC Rcd 7132, 7133 (1995).

<sup>30</sup> WLPX's statement as to its commitment to bear the costs of equipment within the context of its pleadings was proper.

<sup>31</sup> 47 C.F.R. § 76.55(c)(3).

**IV. ORDERING CLAUSES**

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the must carry complaint filed by Channel 29 of Charleston, Inc. (“Paxson”), licensee of commercial television station WLPX, Charleston, West Virginia against Century Ohio Cable Television Corp. d/b/a Adelphia Cable Communications (“Adelphia”) **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that Adelphia shall commence carriage of the WLPX signal on Channel 29 of its cable system serving Portsmouth, Ohio, and the surrounding areas, within sixty (60) days from the date on which WLPX provides a good quality signal to Adelphia’s principal headend.

12. This action is taken pursuant to authority delegated by Section 0.321 of the Commission’s rules.<sup>32</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>32</sup> 47 C.F.R. § 0.321.