

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

In the Matter of:
Unity Broadcasting Corporation
v.
Comcast Cable Communications, Inc.
Request for Carriage of W53AF
(Channel 53), Booneville, Mississippi
CSR-5717-M

MEMORANDUM OPINION AND ORDER

Adopted: October 18, 2001

Released: October 23, 2001

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

I. INTRODUCTION

1. Unity Broadcasting Corporation ("Unity"), licensee of low power station ("LPTV") station W53AF ("W53AF" or the "Station"), Booneville, Corinth and Alcorn County, Mississippi, filed a complaint pursuant to Section 614 of the Communications Act of 1934, as amended, asserting mandatory rights for W53AF on Comcast Cable Communications, Inc.'s ("Comcast") cable system serving the Corinth and Alcorn County, Mississippi area ("cable communities").

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" LPTV stations in certain limited circumstances. An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's rules will be considered "qualified" if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming by the LPTV station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of geographic distance of such full power stations from the low power station's community of license; (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

1 47 U.S.C. § 534.

2 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas 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.³

III. DISCUSSION

3. W53AF states that it requested mandatory carriage on Comcast's Corinth and Alcorn County cable system in a letter dated March 9, 2001.⁴ W53AF argues that it is eligible for carriage because it meets the requirements of Section 76.55(d), which contains the Commission's standards for cable carriage of low power television stations.⁵ Specifically, W53AF asserts that the population of the community it serves is less than 35,000 and that there are no full power stations licensed within the Corinth and Alcorn County, Mississippi area Comcast serves.⁶ It also contends that it complies with Section 74.703 of the Commission's rules and that it is within twenty miles of the cable system's principal headend and delivers a good quality signal to that headend.⁷ W53AF asserts further that it is a 24-hour per day low power television station and meets the minimum operating requirements for full power stations set forth in Section 73.1740 of the Commission's rules and that pursuant to Section 73.1740 of the Commission's rules.⁸ Finally, W53AF maintains that it provides non-entertainment programming that serves the local needs of community, which are not met by any full power television station.⁹ W53AF asks that the Commission order Comcast to commence carriage of the Station on Comcast's cable system serving the Corinth and Alcorn County, Mississippi area.¹⁰

4. Comcast asserts that despite W53AF's claims to the contrary, the Station does not qualify as an LPTV station because it fails to deliver a good quality signal to the cable headend at issue.¹¹ Comcast states that it has measured W53AF's signal strength on two occasions and, each time, the results were below the -45 dBm threshold level required by the Commission's rules.¹² According to Comcast, the test conducted on June 17, 2001 resulted in the following readings: 6:00 a.m., -23 dBmV (-51.05 dBm); 10 a.m., +24 dBmV (-46.35 dBm); 2:00 p.m. -20 dBmV (-50.75 dBm); 6:00 p.m. +26 dBmV (-46.15 dBm); and 11 p.m. +23 dBmV (-46.45 dBm).¹³ Testing conducted on June 18, 2001 revealed the following results: 5:00 a.m. -17 dBmV (-50.45 dBm); and 11:00 a.m. +19 dBmV (-46.85 dBm).¹⁴ In

³ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

⁴ Complaint at 2

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Opposition at 3.

¹² *Id.* and Exhibit 1.

¹³ *Id.*

¹⁴ *Id.*

addition, Comcast maintains that W53AF's complaint is procedurally defective because it was untimely filed.¹⁵ Comcast therefore states that the Commission should dismiss or deny W53AF's complaint.¹⁶

5. We are not persuaded by the arguments raised by W53AF. As noted above, Section 614(h)(2) of the Communications Act, as amended, and Section 76.55(d) of the Commission's rules, establish the requirements that LPTV stations must comply with in order to be a "qualified" LPTV station for must carry purposes.¹⁷ Concerning an LPTV station's responsibility to meet these requirements, the Commission stated: "[o]nly if all of these requirements are met will an LPTV station be entitled to must-carry status."¹⁸

6. Our review of the signal strength test results submitted by Comcast establish that W53AF does not deliver a good quality signal to the Comcast headends at issue, as required by Section 614(h)(2)(D) of the Communications Act, as amended, and Section 76.55(d)(4) of the Commission's rules. Thus, we find that W53AF is not a qualified LPTV station for mandatory carriage purposes and deny its Complaint. Because of our finding, we need not address Comcast's procedural concerns.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the complaint filed by Unity Broadcasting Corporation **IS DENIED** pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534).

8. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁵ Opposition at 3.

¹⁶ *Id.* at 4.

¹⁷ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

¹⁸ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues ("*Must Carry Order*"), 8 FCC Rcd 2965, 2981.

¹⁹ 47 C.F.R. § 0.321.