

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

In the Matter of:)	
)	
Larry L. Schrecongost, Licensee of)	
Low Power Television Station W49BV,)	CSR-4931-M
Indiana, Pennsylvania)	
)	
v.)	
)	
TCI of Pennsylvania, Inc., Adelphia)	
Cable Communications, Hollis Corporation)	
d/b/a Bethel Cable TV, Summerville)	
Cablevision, Inc. and Commuter)	
Cable Television)	
)	
Request for Carriage)	

ORDER ON RECONSIDERATION

Adopted: November 20, 2001

Released: November 30, 2001

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Larry L. Schrecongost (“Schrecongost” or “Petitioner”), licensee of low power television station W49BV (Ch. 49),¹ Indiana, Pennsylvania, filed a petition for reconsideration of the Cable Services Bureau’s decision which dismissed in part and denied in part Petitioner’s must carry complaint against the above cable systems.² Adelphia Cable Communications (“Adelphia”), Hollis Corporation d/b/a Bethel Cable TV (“Bethel”), and TCI of Pennsylvania, Inc. (“TCI”) filed oppositions to the petition to which Petitioner replied.

II. BACKGROUND

2. Section 614(a) of the Communications Act of 1934, as amended, requires the carriage of

¹While W49BV officially changed its call sign to WLLS-LP on June 9, 1997, for purposes of consistency with the pleadings in this matter and to avoid confusion, Petitioner indicates that it will continue to refer to the station as W49BV in this proceeding.

²*Larry L. Schrecongost v. TCI of Pennsylvania, Inc., et al.*, 12 FCC Rcd 13194 (1997)(“Bureau Order”).

“qualified” low power television (“LPTV”) stations in certain limited circumstances.³ Section 614(h)(2)(B) of the Act requires as one of these conditions that the LPTV station seeking carriage establish that the provision of nonentertainment programming by the station would “address local news and information 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 station’s community of license.”⁴

3. Petitioner filed a must carry complaint against five cable operators for their failure to carry W49BV on various Pennsylvania cable systems. Petitioner argued that it was a “qualified” LPTV station entitled to carriage. Petitioner also argued that the cable systems’ denials of carriage based on poor signal quality were not valid because the signal strength tests were not conducted according to accepted engineering criteria. The *Bureau Order* denied Petitioner’s complaint. Although the *Bureau Order* found that the cable operators did not conform to Commission requirements in conducting tests of W49BV’s signal, Petitioner’s complaint was ultimately denied because the Bureau found that Schrecongost failed to meet the burden of demonstrating that W49BV provided nonentertainment programming that addressed the local news and informational needs of the systems’ subscribers.⁵ The *Bureau Order* noted W49BV’s failure to introduce any programming logs or other evidence in support of this criterion and thus concluded that the station was not a “qualified” LPTV station entitled to mandatory carriage, as contemplated by Section 614(h) of the Act or Section 76.55(d) of the Commission’s rules.⁶

III. DISCUSSION

4. In support of its petition for reconsideration, Schrecongost asserts that there is substantial evidence in the record of W49BV’s local programming.⁷ Petitioner states that W49BV provides local informational programming which is not delivered by any other television station in the market.⁸ As a result, Petitioner contends that it meets the statutory definition of a “qualified” LPTV station as contemplated by Section 614(h) of the Act.

5. Schrecongost argues that the Commission’s requirement that LPTV stations asserting must carry rights demonstrate that they provide programming that addresses the local news and informational needs of the community does not place a high evidentiary burden on the LPTV operator, but only a general demonstration of the extent and manner in which its programming meets the community’s needs.⁹ Schrecongost asserts that nothing in the statute or the implementing rules requires LPTV stations to meet those community needs with locally-produced programming.¹⁰ Petitioner states that, instead, the standard is whether the local viewing needs are addressed by the station.¹¹ Petitioner states that in *Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, Home*

³See also 47 C.F.R. §76.55(d)(6).

⁴47 U.S.C. §534(h)(2)(B).

⁵*Bureau Order*, 12 FCC Rcd at 13200. The *Bureau Order*’s finding that the cable operators in this matter did not conduct their signal strength tests according to Commission criteria is not at issue on reconsideration.

⁶*Id.* See also, 47 U.S.C. §614(h) and 47 C.F.R. §76.55(d).

⁷Petition at 2.

⁸*Id.*

⁹*Id.* at 4.

¹⁰*Must Carry Order*, 8 FCC Rcd 2965 (1993).

¹¹Petition at 4.

Shopping Issues, the Commission reached a similar conclusion when it determined that home shopping stations are entitled to must carry status because the stations meet the need of the viewers through the provision of shop-at-home services.¹² Schrecongost maintains that, in the past, the Bureau has not been persuaded that a specific evidentiary showing was necessary to meet the programming requirements.¹³ Indeed, in *Lightning Broadcasting Company*, Petitioner notes that the Bureau rejected the cable operator's assertion that the LPTV station had failed to provide sufficient information to meet the programming standard.¹⁴

6. Schrecongost further asserts that the *Bureau Order* erred by creating a new standard which suggested not only a minimum amount of local programming, but also that the programming be regularly scheduled.¹⁵ In addition, Petitioner states that the *Bureau Order* created new evidentiary burdens in requiring programming logs as proof of local programming.¹⁶ Schrecongost contends that although the *Bureau Order* stated that W49BV did not demonstrate sufficient evidence of local programming, the must carry complaint contained a detailed list of a dozen programs that aired between August 1996 and January 1997, many of which ran several times or on a regular basis.¹⁷ Also, despite the fact that the *Bureau Order* faulted W49BV for only providing "unspecified examples" of local programming, Petitioner points out that it offered specific examples of its religious program airing every Sunday during prime time as well as daily sports news and programming.¹⁸ Schrecongost states that since the filing of the original complaint, even more local programming has been added to W49BV's schedule.¹⁹ Petitioner therefore requests that the Bureau reconsider its earlier decision and direct the subject cable systems to commence carriage of W49BV.

7. In its opposition, Adelpia asserts that W49BV does not meet the criteria necessary for filing a petition for reconsideration because the LPTV station is raising issues already examined and is not relying on facts that have occurred or circumstances which have changed since the original decision.²⁰ Adelpia argues that Petitioner incorrectly alleges that it is not necessary for W49BV to meet all six factors set forth by the Commission for LPTV stations to qualify for must carry status.²¹ More specifically, Adelpia states that Petitioner implies that it is not required to demonstrate that its programming addresses the "local and informational needs" of the communities.²² Adelpia points out that the Commission's rules clearly provide that an LPTV station must meet all of the statutory requirements to be "qualified" for must carry status.²³ Adelpia notes that the Commission has also stated that "an LPTV station will not be

¹²8 FCC Rcd 5321, 5327 (1993) ("Home Shopping Stations").

¹³Petition at 5.

¹⁴9 FCC Rcd 2297, 2298 (1994).

¹⁵Petition at 5. See also *Bureau Order*, 12 FCC Rcd at 13200.

¹⁶*Id.*

¹⁷Complaint at 3-4.

¹⁸*Id.*

¹⁹Petition at Exhibit A.

²⁰Adelpia Opposition at 2.

²¹*Id.* at 3.

²²*Id.*

²³*Must Carry Order*, 8 FCC Rcd at 2981.

qualified unless the Commission determines that the provision of programming by such station would address local news and informational needs not being adequately served by full power television stations. . . .²⁴ Adelphia argues that not only does Petitioner still fail to demonstrate that its programming fulfills the mandate of the Commission's rules, but its reliance on *Home Shopping Stations* is misplaced because that decision did not involve an evaluation of the qualifications of LPTV stations with regard to must carry status nor did it address the issue of whether home shopping stations met the local news and informational needs of communities.

8. Bethel contends that Petitioner presents no new legal or factual information warranting a reversal of the *Bureau Order*.²⁵ Bethel points out that in *Mid-Maine Community Broadcasting*, the Bureau explained that the Act requires that a particularized finding be made regarding an LPTV station's local programming and that, therefore, a licensee's "unsupported contention that its station's programming is locally oriented and addresses local needs not addressed by programming of full power station [is] insufficient."²⁶ Bethel asserts that Petitioner's efforts to supplement its programming showing in this proceeding do not remedy the insufficiencies previously noted in the *Bureau Order* and are inadequate to qualify W49BV for carriage on its cable systems.²⁷

9. TCI's opposition asserts that the Bureau should affirm its earlier *Order* because W49BV fails to meet either prong of the Commission's two-part test with regard to local news and informational programming to be qualified for must carry status.²⁸ TCI contends that Petitioner continues to omit important details on the scheduling and amount of its programming, including the previously addressed and newly-cited programming.²⁹ TCI argues that even if W49BV could show that it consistently broadcasts programming regarding the local news and informational needs of the communities at issue, it has not adequately addressed the fact that all of the TCI cable systems at issue carry numerous full power television stations licensed to Johnstown, Altoona and Pittsburgh, all of which already amply serve the local programming needs of the cable subscribers.³⁰

10. In reply, Petitioner asserts that the opposing parties' definition of local news and informational programming would exclude all of the type of local activities which W49BV covers.³¹ Instead, Schrecongost notes that the opposing parties define as local only those newscasts broadcast by a full power television station between 30-40 miles away.³² Petitioner points out, however, that no opposing system has argued that any of the programming which W49BV provides has been carried by any of the full power stations which they carry.³³ Petitioner states that all of the cable systems' oppositions focus on the

²⁴*Id.*

²⁵Bethel Opposition at 2.

²⁶13 FCC Rcd 4025, 4027 (1997).

²⁷Bethel Opposition at 4.

²⁸TCI Opposition at 2.

²⁹*Id.*

³⁰*Id.* at 3.

³¹Reply at 2.

³²*Id.* Petitioner notes that no cable system pointed specifically to any single news story directly related to their communities from any of these stations.

³³*Id.* at 3.

Bureau Order's mistaken conclusion that highly localized programming can only be counted if it is regularly scheduled. However, Petitioner maintains, there is nothing in either the statute or the Commission's rules which requires that programming must be regularly scheduled in order to qualify as meeting the "local news and informational needs" of the community.³⁴ Schrecongost states that, historically, the Commission has left it up to the individual licensee to assess the needs of the community and provide programming to meet those needs.³⁵ Schrecongost states that it meets that obligation with programming that is not available from any other source.³⁶ Schrecongost contends that its programming listings consistently show the efforts that W49BV is making to assess and meet the needs of these rural communities and to continue to expand that programming as needed.³⁷

11. Section 1.106(c)(1) of the Commission's rules states that reconsideration is appropriate only where the petitioner shows either material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.³⁸ Reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken.³⁹ We will deny Schrecongost's petition because it does not raise a material legal error or omission pursuant to Section 1.106(c)(1) of the Commission's rules.

12. Reconsideration of the initial findings and conclusions in the *Bureau Order* do not show them to be erroneous. We remain unpersuaded that the Petitioner has met the clear burden under the Act and our rules of providing nonentertainment programming that addresses the local news and informational needs of the communities at issue. In the *Must Carry Order*, the Commission stated that an LPTV station which asserts must carry status must be prepared to demonstrate its compliance with the statute and the extent and manner in which it is meeting community needs.⁴⁰ The *Bureau Order* concluded that, from the information available, the programming provided by W49BV was not of the type which met the LPTV criterion as news or informational programming.⁴¹ Schrecongost, in the programming statement attached to the instant petition, states that W49BV, which operates 24-hours per day, regularly airs an average of 4 hours or more of weekly programming that addresses the news and informational needs of its license area.⁴² One hour of such programming is the broadcast of a weekly mass and the remaining programming consists of 3 new one-hour broadcasts of "Two Minutes," an interview program added after the filing of Schrecongost's original complaint. We note, however, that W49BV has failed to provide its programming information in a sufficiently specific way, such as a program log, to enable us to determine the actual time frame and amount of its local programming. Moreover, the *Lightning Broadcasting* decision relied on by Petitioner involved substantially more frequent irregular and regularly scheduled programming of "weekly regional interview shows, high school sports, and school and local news" than that offered by W49BV. In view of the Congressional directive that the Commission make a finding regarding such programming, we

³⁴*Id.*

³⁵*Id.*

³⁶Petition at Attachment A.

³⁷Reply at 4.

³⁸47 C.F.R. §1.106(c)(1).

³⁹*See Eagle Radio, Inc.*, 12 FCC Rcd 5105, 5017 (1997).

⁴⁰8 FCC Rcd at 2982.

⁴¹12 FCC Rcd at 13200.

⁴²Programming Statement at 3.

find that W49BV's contention that its programming is locally-oriented and addresses local programming needs not covered by full power stations to be unsupported. Consequently, we find that W49BV is not a qualified LPTV station as contemplated by Section 614(h)(2) of the Act and is not entitled to mandatory carriage on the subject cable systems.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. §534(d)(3)) and Sections 76.7 and 76.61(a) of the Commission's rules (47 C.F.R. §§76.7 and 76.61(a)), the petition for reconsideration filed by Larry L. Schrecongost against TCI of Pennsylvania, Inc., Adelpia Cable Communications, Hollis Corporation d/b/a Bethel Cable TV, Summerville Cablevision, Inc., and Commuter Cable Television **IS DENIED**.

14. This action is taken pursuant to authority delegated by Sections 0.321 and 1.106 of the Commission's rules.⁴³

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

⁴³47 C.F.R. §§0.321 and 1.106.