

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

In the Matter of: )
African-American Broadcasting )
Company of Bellevue, Inc. ) CSR-5715-M
v. )
Charter Communications )
Petition for Partial Reconsideration )

ORDER ON RECONSIDERATION

Adopted: December 3, 2001

Released: December 5, 2001

By the Deputy Bureau Chief, Cable Services Bureau:

I. INTRODUCTION

1. Falcon Video Communications, L.P. and Falcon Community Ventures I, L.P. d/b/a Charter Communications ("Charter") filed a petition for partial reconsideration of the Cable Services Bureau Order ("Bureau Order") granting must carry status to KWOG(TV) ("KWOG" or the "Station") on Charter's cable systems serving the communities of Wenatchee, Holly, Astoria and Naselle, Washington. African-American Broadcasting Company of Bellevue, Inc. ("African-American") filed an opposition to which Charter replied. Subsequently, Charter filed an Emergency Motion for Stay.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in Implementation of 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. A station's market for this purpose is its "designated market area" or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of

1 African-American Broadcasting Company of Bellevue, Inc. v. Charter Communications ("African-American Broadcasting), DA 01-2298 (Cab. Ser. Bur., released October 4, 2001).

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. § 534(h)(1)(c). Section 76.55 (e) requires that a commercial broadcast television station's market be defined by (continued...)

others, based on measured on measured viewing patterns.

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 station, 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 the initial proceeding, African-American filed a must carry complaint against Charter for its failure to carry KWOG on its cable systems serving Wenatchee, Holly, Astoria and Naselle, Washington.<sup>7</sup> No opposition was received. In its decision the Bureau noted that KWOG and the communities served by Charter were located in the same DMA. Because Charter did not submit any evidence to show otherwise, the Bureau concluded that KWOG was entitled to carriage.<sup>8</sup> In its decision, the Bureau also noted that KWOG was aware that it had the option of providing, if needed, specialized equipment to deliver a good quality signal to Charter's headends.<sup>9</sup>

5. In the instant petition, Charter maintains that it is under no obligation to carry KWOG on its system serving Astoria because that community is outside the Seattle-Tacoma DMA.<sup>10</sup> Charter points out that Astoria is located in the Portland, Oregon DMA. Charter notes that Astoria, Oregon, and Naselle, Washington, are served by Charter's Warrenton, Oregon headend, which is in the Portland DMA. Charter also notes that there are three cable systems involved in the initial proceeding, and not two as indicated in KWOG's filings and the Bureau *Order*.<sup>11</sup> Charter asks that the Bureau clarify KWOG's must carry rights in the communities served by the three cable systems at issue.

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Nielsen Media Research's DMAs.

<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> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>7</sup> *African-American Broadcasting*, DA 01-2298 at 1.

<sup>8</sup> *Id.* at 2.

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

<sup>10</sup> Petition at 1-2. Charter notes that Astoria is located in Clatsop County, Oregon. *Id.* at 2.

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

6. In its Opposition, African-American argues that the instant petition should be dismissed because it is based on factual information not previously presented to the Commission.<sup>12</sup> African-American contends that such information was available during the initial phase of this proceeding, but Charter chose not to respond to African-American's initial must carry request or to its letter-notice of violation. Therefore, according to African-American, this information should not now be considered.<sup>13</sup>

7. In reply, Charter contends that African-American's argument that the instant petition should be dismissed is flawed because it ignores the fact that KWOG misled the Bureau when it represented that all the communities at issue were located in the Seattle-Tacoma DMA.<sup>14</sup> Charter states that it is undisputed that KWOG does not share the same DMA with some of the communities served by the Warrenton system's headend.<sup>15</sup> Charter contends further that KWOG does not deliver a good quality signal to any of the cable systems in question.<sup>16</sup> Charter restates its argument that KWOG is not entitled to assert mandatory carriage rights in the communities outside the shared DMA, and requests that the Bureau confirm that KWOG does not have must carry rights in these communities.<sup>17</sup> Finally, Charter maintains that at the very least, the Bureau should condition any carriage of KWOG on the systems at issue, on the requirement that KWOG provide a good quality signal.<sup>18</sup>

8. We disagree with Charter's contentions in the instant petition and confirm our initial decision.<sup>19</sup> In the instant petition, Charter notes that its Warrenton, Oregon headend serves cities in two DMAs – the Seattle-Tacoma DMA (Naselle) and the Portland, Oregon DMA (Astoria).<sup>20</sup> Thus, based on the information before us, it appears that Charter's Warrenton, Oregon cable systems overlaps two television markets. On the record before us, we cannot ascertain if Charter is able to limit carriage of KWOG to only the Washington communities located in the Seattle-Tacoma DMA where the Station has mandatory carriage rights. In any event, the Commission in its *Must Carry Order* held that “... in situations [involving a television with must carry rights] where a cable system serves a community or communities in more than one county and those counties are assigned to different [DMAs], the cable operator must carry all of the local commercial television signals in both [DMAs],” except “where it is technically able to do so, the cable operator may offer different must-carry line-ups” for communities in the respective [DMAs].<sup>21</sup> Moreover, it states, that “... if the cable system is not able to alter its channel

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<sup>12</sup> Opposition at 1.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> Reply at 2

<sup>15</sup> *Id.* at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 4, citing *McLaughlin Broadcasting v. Charter Communications, II*, 15 FCC Rcd 5724, 5727 n. 17 (2000), which reads in part: “[t]he 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 Charter's Camden headend with a good quality signal.”

<sup>19</sup> *African-American Broadcasting*, DA 01-2298 (Cab. Serv. Bur., released October 4, 2001).

<sup>20</sup> A review of the Commission's records show that the Warrenton system serves the following communities: Astoria, Gearhart, Hammond, Seaside, Warrenton, Cannon Beach, Clatskanie, Clatsop, and Columbia, all located in Oregon; and Ilwaco, Long Beach, Nahcotta, Ocean Park, Seaview, Pacific, Cathlamet and Naselle, Washington.

<sup>21</sup> 8 FCC Rcd at 2975-2976. The Commission noted that this proviso is subject to the statutory safeguards  
(continued...)

line-up on a community-by-community basis and the system straddles two [DMAs], all broadcast stations in both [DMAs] will be considered 'local' for must-carry purposes."<sup>22</sup> Consequently, Charter must carry KWOG on its Warrenton system, unless it can separate KWOG's coverage by television market.

9. The Bureau *Order* clearly stated that cable operators have the burden of showing that a commercial broadcast television station is not entitled to carriage.<sup>23</sup> One method of doing so is for a cable operator to establish that a subject television station signal, such as KWOG's, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>24</sup> Charter presented no evidence in support of its allegations that KWOG does not deliver a good quality signal to the principal headends in question. Consequently, Charter has failed to show that KWOG does not provide a good quality signal to the cable systems in question. In view of this, we need not address KWOG's procedural arguments.

10. Based on the foregoing, we deny Charter's Petition for Partial Reconsideration, affirm our prior decision and modify the Bureau *Order* to clarify that the cable systems at issue are three instead of two. Charter is therefore ordered to begin carriage of station KWOG as ordered in the Bureau *Order*. Because of this action, Charter's Emergency Motion for Stay is moot.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, that the Petition for Partial Reconsideration filed by Falcon Video Communications, L.P. and Falcon Community Ventures I, L.P. d/b/a Charter Communications **IS DENIED**.

12. **IT IS FURTHER ORDERED** that Charter Communications **IS ORDERED** to commence carriage of television station KWOG on its cable systems serving Wenatchee, Holly and Naselle, Washington, which will include Astoria, Oregon, unless Charter is technically capable of filtering out television broadcast signals between DMAs, as ordered in the October 4, 2001 Bureau *Order*.

13. This action is taken pursuant to authority delegated by Sections 0.321, 1.43 and 1.102(b)(2) of the Commission's rules.<sup>25</sup>

FEDERAL COMMUNICATIONS COMMISSION

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provided in the 1992 Act, e.g. the limitations on one-third of usable channel capacity, the substantial duplication limitations, and the closest network affiliation limitation. *Id.* at 2975.

<sup>22</sup> *Id.* at 2976.

<sup>23</sup> *Id.* at 2, citing *Must Carry Order*, 8 FCC Rcd. at 2990.

<sup>24</sup> 47 C.F.R. § 76.55(e)(3).

<sup>25</sup> 47 C.F.R. §§ 0.321, 1.43 and 1.102(b)(2).