

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

In the Matter of: )  
)  
Norwell Television, LLC )  
) CSR-5616-M  
Complaint for Carriage of WWDP(TV) )  
Norwell, Massachusetts )  
)  
)

MEMORANDUM OPINION AND ORDER

Adopted: February 14, 2001

Released: February 16, 2001

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

I. INTRODUCTION

1. Norwell Television, LLC (“Norwell Television”), licensee of WWDP(TV), Norwell, Massachusetts, filed a complaint, pursuant to Section 76.7 of the Commission’s rules,<sup>1</sup> alleging that Harron Cablevision of New Hampshire, Inc. d/b/a Adelphia Communications Corporation (“Adelphia”) improperly refused to carry the signal of WWDP(TV) on Adelphia’s cable systems in Kingston, Londonderry, and New London, New Hampshire (the “Adelphia cable communities”). An opposition to the complaint was filed by Adelphia and WWDP(TV) 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”)*,<sup>2</sup> 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.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of

<sup>1</sup> 47 C.F.R. § 76.7.

<sup>2</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>3</sup> 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 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). Until January 1, 2000, Section 76.55(e) of the Commission’s rules provided that 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) now 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

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others, based on measured viewing patterns.

### III. DISCUSSION

3. In support of its request for carriage, WWDP(TV) states that the station meets the definition of a “local commercial television station” and therefore is eligible to invoke the mandatory carriage provisions of Section 614 of the Communications Act in the Adelphia cable communities.<sup>4</sup> Specifically, WWDP(TV) states that: (1) WWDP(TV) and Adelphia’s cable systems are located within the Boston, Massachusetts, DMA; (2) Adelphia’s cable systems will not incur copyright liability for the carriage of WWDP(TV); and (3) WWDP(TV) agrees to pay for any improvements and installation of new equipment necessary to ensure that a good quality signal is received at the principal headends of Adelphia’s cable systems, if that should prove to be necessary.<sup>5</sup> In addition, WWDP(TV) asserts that, pursuant to Section 76.56(b)(2) of the Commission’s rules, Adelphia’s cable systems have ample carriage capacity in order to accommodate the carriage of WWDP(TV).<sup>6</sup>

4. In response, Adelphia argues that WWDP(TV) fails to provide an adequate quality signal to its cable systems’ principal headends and the station is therefore not eligible for carriage.<sup>7</sup> Adelphia states that Section 614(h)(1)(B)(iii) of the Communications Act specifically excludes from the definition of a “local commercial television station” eligible for must carry status any station “that does not deliver to the principal headend of a cable system . . . a signal level of -45 dBm for UHF signals . . . at the input terminals of the signal processing equipment.”<sup>8</sup> Adelphia asserts that the test results of separate measurements taken at each of its three principal headends showed that WWDP(TV) failed to deliver a signal greater than -83.1 dBm.<sup>9</sup> According to Adelphia, although WWDP(TV) states in its complaint that it is prepared to deliver a good quality signal to Adelphia’s headends, it has made no specific proposals nor has it taken any steps to accomplish this goal.<sup>10</sup> Regardless, Adelphia states that in the event that

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(1999) (“*Modification Final Report and Order*”).

<sup>4</sup> 47 U.S.C. § 534(h)(1); 47 C.F.R. § 76.55(c).

<sup>5</sup> Complaint at 4.

<sup>6</sup> 47 C.F.R. § 76.56(b)(2). Under the Commission’s rules, a cable system with more than 12 usable activated channels is required to carry local commercial television stations on up to one-third of the aggregate number of usable activated channels of such system. WWDP(TV), citing the *2000 Television and Cable Factbook*, states that the Adelphia cable system serving Kingston and Londonderry has 62 usable channels. Of those 62 channels, the cable system carries 12 full-power commercial and three full-power non-commercial television stations that it receives off-air. See *Television and Cable Factbook*, Vol. 68 (2000), at D-1001. WWDP(TV) states that the Adelphia cable system serving Kingston and Londonderry is therefore obligated to carry up to 20 local full-power commercial television stations. Complaint at 5. WWDP(TV) also states, citing the *2000 Television and Cable Factbook*, that the Adelphia system serving New London has 36 activated channels. Of those 36 channels, the cable system carries 11 full-power commercial and two full-power non-commercial television stations that it receives off-air. See *Television and Cable Factbook*, Vol. 68 (2000), at D-1004. WWDP(TV) thus states that the Adelphia cable system serving New London is obligated to carry another local full-power commercial television station. Complaint at 5.

<sup>7</sup> Adelphia Opposition at 1.

<sup>8</sup> 47 U.S.C. § 534(h)(1)(B)(iii). See also 76.55(c)(3).

<sup>9</sup> Adelphia Opposition at 2, Exhibit A.

<sup>10</sup> Adelphia Opposition at 2.

WWDP(TV) takes steps to improve its signal, it stands willing to cooperate and act in compliance with the Commission's rules.<sup>11</sup>

5. In reply, WWDP(TV) alleges that Adelphia failed to abide by the Commission's rules regarding carriage requests because Adelphia denied WWDP(TV) carriage without providing the station with a detailed explanation for denial of carriage.<sup>12</sup> According to WWDP(TV), Adelphia provided only incomplete information regarding denial of carriage and failed to respond to WWDP(TV)'s repeated requests to measure the WWDP(TV) signal.<sup>13</sup>

6. We grant WWDP(TV)'s complaint. We find that the representations made by WWDP(TV) demonstrate that it is a local full-power commercial television station qualified for carriage on Adelphia's cable systems. Under 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 as a cable operator is not entitled to carriage.<sup>14</sup> It is undisputed that all of the Adelphia cable communities are located within the Boston DMA and, as such, all are located within the same television market as WWDP(TV). In addition, because WWDP(TV) is located within the same television market as the Adelphia cable communities, WWDP(TV) is a "local signal" under Section 111 of the Copyright Act.<sup>15</sup> In addition, Adelphia's cable systems have the necessary carriage capacity in order to carry WWDP(TV).

7. With regard to the signal quality issue, WWDP(TV) states that it is committed to providing an adequate quality signal to Adelphia's headends and stands ready to pay for any improvements and installation of new equipment that may prove to be necessary in order to ensure the delivery of a good quality signal. The Commission has held that a cable operator cannot refuse to carry a television station that agrees to purchase and install, at its own expense, the equipment necessary to deliver an adequate signal to the operator's headend.<sup>16</sup> WWDP(TV), by committing to provide and install the necessary equipment, satisfies its obligation to bear the costs associated with delivering a good quality signal to Adelphia's headends. Consequently, we order Adelphia to carry WWDP(TV)'s signal.

#### IV. ORDERING CLAUSES

8. 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 Norwell Television, LLC, licensee of WWDP(TV), Norwell, Massachusetts against Harron Cablevision of New Hampshire, Inc. d/b/a Adelphia Communications Corporation **IS GRANTED**.

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

<sup>12</sup> In accordance with the Commission's rules, WWDP(TV) states that the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue. *See* 47 C.F.R. § 76.61(a)(2). According to WWDP(TV), Adelphia failed to act in accordance with this rule when it denied WWDP(TV) carriage on October 23, 2000. WWDP(TV) states that Adelphia did not attempt to conduct reliable tests until after WWDP(TV) filed its must carry complaint and until after Adelphia denied the station carriage. WWDP(TV) Reply at 2.

<sup>13</sup> WWDP(TV) Reply at 2.

<sup>14</sup> *See Must Carry Order*, 8 FCC Rcd at 2990.

<sup>15</sup> 17 U.S.C. § 111.

<sup>16</sup> *See, e.g., WMFP, Inc.*, 11 FCC Rcd 17264 (1996); *KSLN, Inc.*, 11 FCC Rcd 12718 (1996).

9. **IT IS FURTHER ORDERED** that Harron Cablevision of New Hampshire, Inc. d/b/a Adelphia Communications Corporation **SHALL COMMENCE CARRIAGE** of the signal of WWDP(TV) within sixty (60) days from the date that WWDP(TV) provides a good quality signal at Harron Cablevision of New Hampshire, Inc.'s principal headends serving Kingston, Londonderry, and New London, New Hampshire.

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>17</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>17</sup> 47 C.F.R. § 0.321.