

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

In the Matter of:)
Norwell Television, LLC v. Adelphia)
Communications Corporation) CSR 5613-M
Request for Mandatory Carriage of WWDP (TV),)
Norwell, Massachusetts in Gloucester and)
Martha's Vineyard/Tisbury, Massachusetts)

MEMORANDUM OPINION AND ORDER

Adopted: February 15, 2001

Released: February 16, 2001

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

I. INTRODUCTION

1. Norwell Television, LLC, licensee of television broadcast station WWDP (Ch. 46), Norwell, Massachusetts ("WWDP"), filed the above-captioned must carry complaint against Frontiervision Operating Partners, L.P. and Martha's Vineyard Cablevision, L.P., both subsidiaries of Adelphia Communications Corporation ("Adelphia"), for failing to carry WWDP on their cable systems serving the communities of Gloucester, Martha's Vineyard, and Tisbury, Massachusetts (the "Systems"). An opposition to this complaint was filed on behalf of Adelphia to which WWDP replied. For the reasons discussed below, WWDP's must carry complaint is granted.

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.¹ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.² A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

¹8 FCC Rcd 2965, 2976-2977 (1993).

²Section 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 Nielsen Media Research's DMAs.

III. DISCUSSION

3. In support of its request, WWDP states that it is licensed in the Boston DMA, and that Adelphia's Gloucester, Martha's Vineyard, and Tisbury cable systems serve communities which are also in the Boston DMA. As a result, WWDP argues that it is a qualified "local commercial television station" entitled to carriage on the Systems.³ WWDP submits that it formally demanded carriage from Adelphia via a letter dated July 28, 2000, but never received a response.⁴ The July 28 request was sent to Adelphia's Plymouth, Massachusetts office, which apparently oversees only two of the communities. WWDP sent a second demand for carriage on the Gloucester system to Adelphia's Amesbury, Massachusetts office on October 17, 2000.⁵ WWDP requests that the Commission compel Adelphia to carry its signal on the Systems. WWDP states that it is committed to paying all expenses and purchasing any new equipment associated with providing a good quality signal to Adelphia's headends.⁶

4. In opposition, Adelphia argues that WWDP's complaint is premature as to Adelphia's Gloucester system because it was filed only nine days after WWDP sent its must carry request, whereas the statute gives cable operators thirty days to respond to must carry requests.⁷ Adelphia further argues that WWDP is not eligible for carriage on the Systems because the station does not deliver a signal of sufficient strength to the cable systems' principal headend as required by the statute and the Commission's rules.⁸ In reply, WWDP maintains it is entitled to carriage because it has established, and Adelphia did not dispute, that it is in the same DMA as the systems.⁹ Regarding signal strength, WWDP argues that Adelphia's claim that it does not provide a good signal is irrelevant because it has pledged to pay for any improvements and installation of new equipment necessary to ensure that a good quality WWDP signal is received at Adelphia's principal headends.¹⁰ As to the claim that the complaint against the Gloucester system is premature, WWDP argues the claim should not be dismissed because Adelphia failed to respond to the thirty day deadline after the complaint was filed a second time.¹¹

5. As a threshold issue, we do not believe that WWDP's complaint against Adelphia's Gloucester system was filed prematurely. The Commission's rules require a local commercial broadcast station seeking carriage to notify the cable operator in writing of the reasons it believes it is entitled to carriage, and allow the cable operator thirty days to respond.¹² WWDP waited at least thirty days following its July 28 demand for carriage to file its complaint. Adelphia, the owner of all of the cable systems at issue, has not made it clear what it considers unreasonable about WWDP's sending its demand to Adelphia's Plymouth office instead of its Amesbury office.¹³ In any event, the parties have been given the opportunity

³Complaint at 4, *citing* 47 C.F.R. §76.55(c).

⁴*Id.* at 2 and Exhibit I.

⁵*Id.* at 3 n.7 and Exhibit II.

⁶*Id.* at 4.

⁷Opposition at 1, *citing* 47 U.S.C. §534(d)(1).

⁸*Id.* at 1-2 and Exhibit A, *citing* 47 U.S.C. §534(h)(1)(B)(iii) and 47 C.F.R. §76.55(c)(3).

⁹Reply at 2.

¹⁰*Id.*

¹¹*Id.* at 4.

¹²47 C.F.R. § 76.61(a).

¹³See *Colonial Cablevision of Revere, Inc.*, Memorandum Opinion and Order, 76 FCC 2d 56 (1980).

to fully plead the issues in this proceeding. We believe it would be a superfluous use of administrative and private resources to dismiss the Gloucester aspect of the complaint and require the parties to litigate the issues again.

6. Regarding carriage, we find the representations made by WWDP indicate that WWDP is a local full power commercial station qualified for carriage on the Systems. According to Section 76.55(e) of the Commission's rules, commercial television broadcast stations, such as WWDP, are entitled to carriage on cable systems located in the same DMA.¹⁴ WWDP is located in the Boston DMA, which is also where the communities served by the Systems are located. We note that WWDP has stated that it can provide, at its own expense, new equipment that once installed will allow it to provide a signal to Adelphia's headends that is consistent with Commission criteria. Thus, we will not address Adelphia's claims against WWDP's signal.

7. 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.¹⁵ WWDP, by committing to provide any necessary equipment, satisfied its obligation to bear the costs associated with delivering a good quality signal. Consequently, we grant WWDP's complaint, conditioned upon WWDP delivering a good quality signal to Adelphia's headends.

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 television broadcast station WWDP, Norwell, Massachusetts against Frontiervision Operating Partners, L.P. and Martha's Vineyard Cablevision, L.P., both subsidiaries of Adelphia Communications Corporation **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that Adelphia **SHALL COMMENCE CARRIAGE** of the signal of WWDP within sixty (60) days from the date that WWDP provides a good quality signal at Adelphia's principal headends serving the communities Gloucester, Martha's Vineyard, and Tisbury, Massachusetts.

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴47 C.F.R. §76.55(e).

¹⁵See, e.g., WMFP, Inc., 11 FCC Rcd 17264 (CSB 1996); KSLS, Inc., 11 FCC Rcd 12718 (CSB 1996).

¹⁶47 C.F.R. §0.321.