

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

In the Matter of:	)	
	)	
Norwell Television, LLC v. Time Warner Cable	)	
	)	CSR-5611-M
Request for Mandatory 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, licensee of television broadcast station WWDP(TV), Norwell Massachusetts (“Norwell”), filed the above-captioned complaint against Time Warner Cable (“Time Warner”), for its failure to carry WWDP on Time Warner’s system serving Athol, Massachusetts and the unincorporated areas around Athol, Massachusetts (the “cable communities”).<sup>1</sup> An opposition to this complaint was filed on behalf of Time Warner to which Norwell has replied. Norwell filed a supplement in order to further identify the cable communities subject to its petition.

**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

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<sup>1</sup> Norwell states that the cable communities, for purposes of this petition, are Athol and the unincorporated areas around Athol within the Boston, Massachusetts DMA that receive service from Time Warner’s Athol cable system. Norwell further states that the Athol system also serves the incorporated community of Orange, Massachusetts, which is not within the Boston DMA. Accordingly, the petition does not request mandatory carriage for any portion of the Athol system outside of the Boston DMA. However, Norwell notes that the Commission requires a cable television system operator with a system serving two DMAs to carry a broadcast station in both DMAs unless the system is technologically capable of carrying the station only in the communities serving the DMA to which the station belongs. *See, e.g., Paxson Communications Corporation*, 13 FCC Rcd 11139, 11141 (1998).

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

Research.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

### III. DISCUSSION

3. In support of its request, Norwell states that WWDP is licensed to Norwell, Massachusetts, and that the station and Time Warner's cable television system serving the cable communities are both located within the Boston, Massachusetts DMA. As a result, Norwell argues that WWDP is a qualified "local commercial television station" entitled to carriage on Time Warner's system. Norwell states in its complaint that it agrees to pay for any improvements and installation of new equipment necessary to ensure that a good quality signal is received at the principal headend of Time Warner's cable system. The pleadings in this matter indicate that the only question presented is whether WWDP provides a signal of adequate quality to Time Warner's headend.<sup>4</sup>

4. In its opposition, Time Warner argues that WWDP does not meet the standards of Section 76.55 of the Commission's rules, which state that a UHF television station must deliver a signal level to the cable headend of  $-45\text{dBm}$  or higher.<sup>5</sup> Time Warner contends that its personnel used "good engineering practices" to measure WWDP's signal in accordance with the Commission's test criteria, and that the testing revealed that the station fails to deliver an over-the-air signal of sufficient quality.<sup>6</sup> Time Warner contends that the highest signal measured during the 24 signal tests was  $-59.5\text{ dBm}$ ,  $14.5\text{ dBm}$  below the Commission's threshold for a good quality UHF signal.<sup>7</sup>

5. In reply, Norwell argues that the station is entitled to carriage according to Section 76.55(c)(3), which states that a UHF station will be entitled to carriage if it either delivers a signal of at least  $-45\text{ dBm}$  to the cable system's principal headend or agrees to be responsible for the costs of delivering a signal of good quality to the cable system.<sup>8</sup> Norwell restates its commitment to purchase and install the equipment necessary to deliver a good quality signal to Time Warner's principal headend.<sup>9</sup> Norwell also questions the methodology of Time Warner's testing of WWDP's signal, and contends that the station's

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<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 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). 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 (1999) ("Modification Final Report and Order").

<sup>4</sup> See 47 C.F.R. § 76.55 (c)(3).

<sup>5</sup> Opposition at 2.

<sup>6</sup> *Id.* at 3, Declaration of Peter M. Taubkin.

<sup>7</sup> *Id.*

<sup>8</sup> Reply at 2. See *Complaint of Shop at Home, Inc. for Carriage of WOAC-TV*, 14 FCC Rcd 20591 (1999).

<sup>9</sup> *Id.* at 3.

signal would have been of acceptable quality had Time Warner used more modern equipment to obtain its test results.

6. 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.<sup>10</sup> WWDP is located in the Boston, Massachusetts DMA, which is also where the cable communities served by Time Warner are located. The question presented in this matter is whether WWDP provides an adequate signal to Time Warner's principal headend. In this regard, we are not convinced that Time Warner has used sound engineering practices in determining the station's signal strength. The Tektronix 2710 analyzer used by Time Warner to measure WWDP's signal strength was last calibrated in June of 1998, and the tests in question were performed from August, 2000 through November, 2000. Tektronix recommends that the analyzer be calibrated every twelve months in order to perform accurately and up to specifications. We therefore cannot conclude that the tests accurately represent WWDP's signal strength at Time Warner's principal headend, and presume that the station provides a good quality signal to the headend. Accordingly, Time Warner may conduct new signal strength tests, within fifteen days of the release of this order, with equipment that comports with sound engineering practices.

7. If the new signal strength tests measure an acceptable signal provided by WWDP to Time Warner's headend, the cable operator will be required to begin carrying the station within sixty days of the test. If the signal strength tests still measure a signal that does not comply with the Commission's rules, WWDP must provide specialized equipment to ensure the receipt of a good quality signal to Time Warner's principal headend in order to qualify for mandatory carriage. The Commission has stated that amplifiers and other equipment may be employed to deliver a good quality signal to a cable system headend. The Commission, in the *Must Carry Clarification Order*, after re-emphasizing that it was the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend, stated:

This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements . . . .<sup>11</sup>

8. Norwell, by committing to provide specialized equipment, satisfies its obligation to bear the costs associated with delivering a good quality signal to Time Warner's headend. 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>12</sup> Time Warner will not be placed in the position of employing its own facilities and equipment to accommodate Norwell's carriage request.<sup>13</sup>

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<sup>10</sup> 47 C.F.R. §76.55(e).

<sup>11</sup> 8 FCC Rcd 4142, 4143 (1993).

<sup>12</sup> See, e.g., *WMFP, Inc.*, 11 FCC Rcd 17264 (CSB 1996); *KSLs, Inc.*, 11 FCC Rcd 12718 (CSB 1996).

<sup>13</sup> See *Jasas Corporation v. TCE Cablevision of Maryland, Inc.*, 14 FCC Rcd 7063 (CSB 1999)(Bureau rejected must carry request where station proposed using cable operator's facilities to deliver its signal to the principal headend).

**IV. ORDERING CLAUSES**

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. §534), that the complaint filed by Norwell Television, LLC, **IS GRANTED**. Time Warner Cable **IS ORDERED** to commence carriage of television station WWDP within sixty (60) days from the date that television station WWDP provides a good quality signal at Time Warner's principal headend in Athol, Massachusetts, either as a result of the aforementioned signal strength tests or the provision of specialized equipment by Norwell Television, LLC.

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>14</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>14</sup> 47 C.F.R. §0.321.