

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

In the Matter of:)	
)	
Norwell Television, LLC v. Time Warner Cable)	
)	CSR-5610-M
Request for Mandatory Carriage of WWDP (TV),)	
Norwell, Massachusetts)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 16, 2001

Released: February 22, 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 Keene, New Hampshire and the surrounding communities of Marlborough, Richmond, Rocksbury, Surrey, and Swanzey, New Hampshire (the “cable communities”). An opposition to this complaint was filed on behalf of Time Warner. 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”)*,¹ 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.² A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

¹ 8 FCC Rcd 2965, 2976-2977 (1993).

² 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

(continued...)

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.³ 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.⁴

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 -45dBm or higher.⁵ 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.⁶ Time Warner contends that the tests failed to detect the station's video or audio signal, even though Time Warner's spectrum analyzer was set to detect a signal as low as -70dBm, well below the -45dBm standard for a good quality UHF signal.⁷ Norwell did not file a reply nor contest Time Warner's methods of calculating the station's signal strength.

5. 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.⁸ WWDP is located in the Boston, Massachusetts DMA, which is also where the cable communities served by Time Warner are located. The Commission has stated that specialized equipment, such as 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 requirements⁹

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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").

³ Petition at 4.

⁴ See 47 C.F.R. § 76.55 (c)(3).

⁵ Opposition at 2.

⁶ *Id.* at 3.

⁷ *Id.* at 3, Declaration of Thomas J. Casey.

⁸ 47 C.F.R. §76.55(e).

⁹ 8 FCC Rcd 4142, 4143 (1993).

6. 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.¹⁰ Time Warner will not be placed in the position of employing its own facilities and equipment to accommodate Norwell's carriage request.¹¹

IV. ORDERING CLAUSES

7. 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(TV), Norwell, Massachusetts against Time Warner Cable **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that Time Warner Cable **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 Time Warner's principal headend serving the communities of Keene, Marlborough, Richmond, Rocksbury, Surrey, and Swanzey, New Hampshire.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹²

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁰ See, e.g., *WMFP, Inc.*, 11 FCC Rcd 17264 (CSB 1996); *KSLs, Inc.*, 11 FCC Rcd 12718 (CSB 1996).

¹¹ 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).

¹² 47 C.F.R. §0.321.