

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

In the Matter of:)	
)	
Norwell Television, LLC v. Shrewesbury)	
Community Cablevision)	CSR-5633-M
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: April 2, 2001

Released: April 3, 2001

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

I. INTRODUCTION

1. Norwell Television, LLC, licensee of television station WWDP, Norwell, Massachusetts (“WWDP”), filed the above-captioned complaint against Shrewesbury Community Cablevision (“SCC”) for its failure to carry WWDP on its system serving Shrewesbury, Massachusetts and the surrounding environs. An opposition to this petition was filed on behalf of SCC to which WWDP replied.

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, 1976-2977 (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). 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*”).

III. DISCUSSION

3. In support of its request, WWDP states that it is a full power, independent station licensed to the Boston, Massachusetts DMA, as is the cable system served by SCC. WWDP states that it acquired the station in June 2000 and broadcasts primarily Spanish-language programming provided by Telemundo.³

WWDP indicates that on July 28, 2000, it formally requested carriage on the Shrewsbury cable system.⁴ WWDP states that SCC's August 29, 2000 response alleged that WWDP failed to provide a good quality signal to the cable system's principal headend.⁵ After receiving permission to measure its signal at the Shrewsbury headend site, WWDP states that, with the installation of an antenna and related equipment, it provided a good quality signal to the system on October 25, 2000.⁶ However, despite this and its intention to improve its signal still further by the installation of a noise-reduction apparatus, WWDP states that SCC demanded, without explanation, the removal of all of WWDP's equipment from its headend tower.⁷ As a result of this demand, WWDP states that it filed the instant complaint.

4. WWDP argues that its complaint was timely filed following the receipt of SCC's order to remove the station's equipment.⁸ WWDP asserts that because it is located within the same DMA as SCC's system, it is entitled to mandatory carriage if it satisfies the Commission's definition of a "qualified local commercial television station" under the must carry rules.⁹ WWDP states that it has satisfied this definition. WWDP points out that, as a station within the same DMA, its carriage will not cause increased SCC copyright liability.¹⁰ Further, WWDP states that it has specifically agreed to pay for the installation of any equipment necessary to ensure the delivery of a good quality signal.¹¹ WWDP argues that the Shrewsbury cable system has 80 usable, activated channels and only carries 14 out of an obligated 26 local full power commercial and noncommercial television stations.¹² WWDP therefore requests that the Commission grant its complaint and order SCC to commence carriage of its signal.

5. In opposition, SCC states that, after receiving the must carry request from WWDP, it performed a signal strength test, utilizing the same testing techniques it has used for other must carry requests.¹³ SCC states that this test demonstrated that WWDP's signal level was -85 dBm, well below the required -45 dBm threshold required for a good quality signal.¹⁴ SCC points out that although WWDP's

³Petition at 1. WWDP indicates that its programming consists of news, entertainment, local public affairs, children's, and program-length presentations of local and national businesses and community organizations.

⁴*Id.* at Exhibit 1.

⁵*Id.* at Exhibit II.

⁶*Id.* at Exhibit IV.

⁷*Id.* at Exhibit V.

⁸47 C.F.R. §76.61(a)(3).

⁹47 C.F.R. §76.55(c)(2).

¹⁰17 U.S.C. §111(f).

¹¹47 C.F.R. §76.56(b)(2).

¹²*Id.*

¹³Opposition at 2.

¹⁴*Id.*

engineering consultant was able to achieve the receipt of a minimum level signal from WWDP, after the installation of additional signal boosting equipment, WWDP's picture quality still remains poor.¹⁵ SCC maintains that the picture quality of WWDP is not comparable with the other must carry broadcast stations its carries which meet the signal strength levels without the need to install additional equipment.

6. In reply, WWDP argues that SCC's arguments are without merit since WWDP successfully provided a good quality signal to SCC's principal headend, until it was ordered to remove its equipment at SCC's request. WWDP points out that SCC has not refuted the fact that it is located within the same DMA as WWDP, that WWDP's carriage will not cause increased copyright liability, or that the cable system has the channel capacity to accommodate WWDP's signal. Although SCC has claimed that its signal strength test of WWDP resulted in a -85 dBm signal level, WWDP argues that SCC has failed to provide any evidence to support this claim, as required by Section 76.61(a)(2) of the Commission's rules.¹⁶ Specifically, WWDP states that the cable operator must provide a list of the 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.¹⁷ As a result of SCC's failure to provide this information, WWDP maintains that its allegation of poor signal quality cannot be given any credence. WWDP asserts that once it purchased and installed the equipment necessary to deliver a good quality signal, SCC was obligated to commence carriage of its signal.¹⁸

7. We grant WWDP's complaint. The Commission's must carry regulations allow a commercial television signal to improve the reception of its signal at a cable system's principal headend by installing, at its own cost, the equipment necessary to ensure the delivery of a good quality signal.¹⁹ In initially testing the reception of its signal at SCC's headend, WWDP installed equipment which resulted in WWDP providing a signal that met the minimum signal strength criteria required by the Commission's rules. Furthermore, instead of commencing carriage of WWDP, SCC ordered WWDP to remove all of its equipment and denied any further access to its facilities. SCC in so doing alleged that WWDP was providing a poor quality signal. However, SCC provided no engineering evidence to support its allegations of poor signal quality. We find that SCC's actions contravene the intent of the must carry rules. As stated in the *Must Carry Order*, the Commission expects cooperation between cable operators and television stations where a station's signal quality is at issue.²⁰ As a result, we order SCC to allow WWDP the opportunity to optimize its signal with equipment supplied by it, within 30 days of the release date of this Order.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Norwell Television, LLC. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C.

¹⁵*Id.*

¹⁶47 C.F.R. §76.61(a)(2).

¹⁷*Id.*

¹⁸*See Shop at Home, Inc. v. Parnossos, L.P. d/b/a Adelpia Cable Communications*, 14 FCC Rcd 20591 (1999).

¹⁹*See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Clarification Order")*, 8 FCC Rcd 4142, 4145 (1993).

²⁰8 FCC Rcd at 2990.

§534). Shrewsbury Community Cablevision **IS ORDERED** to commence carriage of WWDP on its cable system serving Shrewsbury, Massachusetts and the surrounding environs sixty (60) days from the release date of this Order.

9. **IT IS FURTHER ORDERED** that Shrewsbury Community Cablevision allow WWDP to retest its signal using equipment supplied by WWDP at the system's principal headend, within thirty (30) days of the release date of this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

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