

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

In the Matter of:)	
)	
Norwell Television, LLC)	
)	CSR-6002-M
v.)	
)	
Full Channel TV, Inc.)	
)	
Petition for Reconsideration)	
)	

ORDER ON RECONSIDERATION

Adopted: April 11, 2003

Released: April 11, 2003

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Full Channel TV, Inc. (“Full Channel”), operator of a cable system serving Barrington, Bristol Township, Warren and the unincorporated areas of Bristol County, Rhode Island,¹ requests reconsideration of the Media Bureau’s (“Bureau”) Memorandum Opinion and Order² granting the complaint of Norwell Television, LLC (“Norwell”), licensee of television broadcast station WWDP, Norwell, Massachusetts (“WWDP”) and ordering Full Channel to carry WWDP on its cable system. An opposition to this request was filed on behalf of WWDP, to which Full Channel filed a reply. In addition, Full Channel filed a Petition for Stay delaying the effective date of the Bureau’s *Complaint Order*.³

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”),⁴ and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and*

¹ Full Channel indicates that there are no unincorporated areas of Bristol County, Rhode Island. WWDP does not address this particular issue. However, as we stated in the *Market Modification Order*, Commission records indicate that only certain unincorporated areas of Bristol County are served by the cable system. See Petition for Reconsideration at 1.

² *Norwell Television, LLC v. Full Channel TV, Inc.*, DA 03-413 (MB rel. Feb. 12, 2003)(“*Complaint Order*”).

³ In view of our ruling on the petition for reconsideration, the petition for stay is moot.

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

Competition Act of 1992, Broadcast Signal Carriage Issues Report and Order (“*Must Carry Order*”),⁵ 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.⁶

3. In its initial filing in this proceeding, Norwell filed a Petition for Special Relief seeking to add to WWDP’s market the communities served by Full Channel.⁷ Full Channel did not oppose the market modification request and on August 20, 2002, WWDP’s market modification petition was granted.⁸ After release of the *Market Modification Order*, WWDP formally requested carriage on Full Channel’s system. After attempting to arrange carriage without a response from Full Channel, WWDP filed a must carry complaint against Full Channel. WWDP maintained that it had begun carrying programming provided by America’s Collectibles Network, a home shopping channel, and that it did not imply that its carriage of America’s Collectibles was temporary or that it intended to resume carrying Telemundo, a network which provides Spanish-language programming. Full Channel did not oppose the must carry complaint. The Bureau granted WWDP’s must carry complaint, finding that the unopposed representations made by WWDP demonstrate that it is a full-power commercial television station qualified for carriage on Full Channel’s system.⁹ The Bureau ordered Full Channel to commence carriage of WWDP on its cable system serving the communities of Barrington, Bristol Township, Warren and the unincorporated areas of Bristol County, Rhode Island within sixty (60) days from the release of the must carry *Complaint Order* (i.e. by April 13, 2003).

III. DISCUSSION

4. In support of its petition, Full Channel asserts that it failed to oppose WWDP’s market modification and must carry petitions because it believed that the station was converting to a Spanish-language format and that it was interested in carrying Spanish-language programming.¹⁰ Full Channel states that it was not until after the Bureau granted the *Complaint Order* that it learned that WWDP would not offer Spanish-language programming.¹¹ Moreover, Full Channel asserts that WWDP made representations that it was affiliated with Telemundo and would be providing coverage of issues of

⁵ 8 FCC Rcd 2965, 2976-2977 (1993).

⁶ 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). Section 76.55(e)(2) of the Commission’s rules requires that a commercial television station’s market be defined by Nielsen Media Research’s DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999)(“*Modification Final Report and Order*”).

⁷ See *Norwell Television, LLC*, 17 FCC Rcd 16085 (MB 2002)(“*Market Modification Order*”).

⁸ *Id.*

⁹ See *Complaint Order*, DA 03-413 (MB rel. Feb. 12, 2003).

¹⁰ Petition for Reconsideration at 2.

¹¹ *Id.* at 3.

concern to Hispanic and other residents in the Full Channel communities which no other station on the cable system provides.¹² Consequently, Full Channel argues that grant of its petition is in the public interest because it would prevent the imposition of a carriage requirement premised on facts different from those represented by WWDP.¹³ Additionally, Full Channel states that in order to add WWDP, it will either have to delete a more widely viewed Spanish-language television station (WUNI-TV), a significantly-viewed English-language television station, or a more popular subscription service.¹⁴ Full Channel asserts that its communities are already well-served by the carriage of three home shopping stations on Full Channel's system and that no programming diversity interest is advanced by the requirement to carry WWDP.¹⁵ In addition, Full Channel argues that WWDP fails to meet the criteria for market modification in the Full Channel communities in that WWDP has no historical carriage, no significant evidence of viewing in the Full Channel communities, and little evidence (other than its Grade B Signal) of coverage of issues of local concern or other events of interest.¹⁶ Full Channel asserts that with the knowledge that WWDP intended to carry home shopping, rather than Telemundo programming, the Bureau might have reached a different result in the *Market Modification Order* and the *Complaint Order*.¹⁷ Moreover, Full Channel states it would have made these and other points had it known about WWDP's intended programming.¹⁸ In addition, Full Channel asserts that there is a blurring of the distinction between the Providence and Boston Markets in that WWDP is located in the Boston DMA and Full Channel's cable system is located in the Providence DMA and the addition of the Full Channel communities changes the fundamental structure of these markets.¹⁹ Full Channel states that its failure to oppose WWDP's request to modify its market may have affected the result of the market modification request.²⁰

5. In its opposition, WWDP states that Full Channel does not indicate that it is not obligated to carry WWDP, but instead complains about WWDP's programming content. WWDP argues that Full Channel's request that the Commission reconsider the *Market Modification Order* is improper as it is no longer subject to reconsideration.²¹ Moreover, WWDP states that Full Channel's claim that the Commission had less than a full and accurate record on which to base its decision in the *Complaint Order* is contrary to fact, in that WWDP never stated that it would replace its home shopping programming with

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.* at 7.

¹⁹ *Id.*

²⁰ *Id.* at 6-8.

²¹ Opposition at 1-2.

Spanish-language programming.²² WWDP also points out that a must carry complaint proceeding focuses on whether the subject station is qualified for carriage by determining (i) whether such carriage will cause increased copyright liability for the cable operator; (ii) whether the station provides the cable operator's principal headend with a good quality signal; and (iii) whether the cable operator has the channel capacity to carry the station.²³ WWDP argues that the Bureau concluded in the *Complaint Order* that WWDP demonstrated that it is a local full-power commercial television station qualified for carriage on Full Channel's system.²⁴ WWDP asserts that Full Channel's instant petition fails to challenge any finding made by the Bureau in the *Complaint Order* or raise any issue relevant to a must carry complaint proceeding.²⁵ WWDP also asserts that Full Channel's argument that the Bureau should reverse the *Complaint Order* to avoid a merger of the Providence DMA and Boston DMA is untimely and misplaced because the time within which Full Channel could have legally opposed the modification of WWDP's market has long since passed.²⁶ With regard to Full Channel's concern about programming on the station, WWDP states that Full Channel wrongly assumed that WWDP was carrying America's Collectibles programming only temporarily, and that it was going to resume carrying Telemundo programming.²⁷ Moreover, WWDP argues that programming content is not a factor to be considered in must carry complaint proceedings.²⁸ In addition, WWDP states that Full Channel's claim that it will have to delete another station to carry WWDP is without merit because under Section 76.52(b)(2), Full Channel, which currently carries only nine full-power commercial stations, is obligated to carry up to 17 local full-power commercial stations.²⁹

6. In reply, Full Channel argues that WWDP's representations about WWDP's programming are germane because they formed the basis for Full Channel's decision not to oppose WWDP's request and for the Bureau's modification and complaint grants.³⁰ Full Channel states that it filed no opposition because it wanted to carry a Telemundo Spanish-language station and WWDP told both Full Channel and the Bureau that WWDP would be a Spanish-language Telemundo station, and such representation was a critical factor underlying grant of WWDP's request for market modification and grant of the *Complaint Order*.³¹ In addition, Full Channel asserts that some stations will have to be deleted as a result of the enforcement of the *Complaint Order* and points out that given that Full Channel

²² *Id.* at 2.

²³ *Id.* at 4. *See* 47 C.F.R. § 76.55.

²⁴ *Complaint Order*, at 2.

²⁵ Opposition at 5.

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ *Id.* at 8.

²⁹ *Id.* at 8-9.

³⁰ Reply at 3.

³¹ *Id.* at 5.

already carries three home shopping stations, grant of mandatory carriage rights to WWDP will result in less programming diversity, which Full Channel states would be in stark contrast to WWDP's claims of programming diversity and improved local service.³²

7. The *Complaint Order* clearly stated that cable operators have the burden of showing that a commercial broadcast television station is not entitled to carriage.³³ Full Channel's petition for reconsideration of the *Complaint Order* fails to address any of the factors considered when determining whether a subject station is qualified for carriage. Instead, Full Channel's petition seeks to relitigate the issue of modifying the Boston DMA to include the Full Channel TV, Inc. cable communities of Barrington, Bristol Township, and Warren, Rhode Island, which was addressed in the *Market Modification Order*. The *Market Modification Order* is no longer subject to reconsideration or review. Full Channel failed to file for reconsideration of that *Order* although it had full and fair opportunity to file a timely petition for reconsideration.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the Petition for Reconsideration filed by Full Channel TV, Inc. **IS DENIED**.

9. **IT IS FURTHER ORDERED** that Full Channel TV, Inc. commence carriage of WWDP on its cable system serving the communities of Barrington, Bristol Township, Warren, and unincorporated areas of Bristol County, Rhode Island, within thirty (30) days of the release of this order.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.³⁴

FEDERAL COMMUNICATION COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

³² *Id.* at 7-8.

³³ *Must Carry Order*, 8 FCC Rcd at 2990.

³⁴ 47 C.F.R. § 0.283.