

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

In the matter of:
Ebenezer Broadcasting Group, Inc.
v.
Liberty Cablevision of Puerto Rico
Request for Carriage
CSR-6058-M

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2003

Released: April 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Ebenezer Broadcasting Group, Inc., licensee of television broadcast station WIDP (Ch. 46), Guayama, Puerto Rico ("WIDP") filed the above-captioned complaint against Liberty Cablevision of Puerto Rico ("Liberty"), for its failure to carry WIDP on its cable system serving Puerto Rico. An opposition to this complaint was filed on behalf of Liberty to which WIDP replied. For the reasons discussed below, we grant WIDP's complaint.

II. DISCUSSION

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, 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.

3. In support of its petition, WIDP states that by letter dated August 7, 2002, it notified Liberty of its election of must carry status and expressed its preference for carriage on cable channel 18. When Liberty failed to respond to this letter, WIDP states that it formally demanded carriage on

18 FCC Rcd 2965, 2976-2977 (1993) ("Must Carry Order").

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)(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").

3Complaint at Exhibit A. WIDP states that it expressed a willingness to discuss an alternative channel that is mutually acceptable to both parties.

September 10, 2002, pursuant to Section 76.61(a) of the Commission's rules.<sup>4</sup> WIDP states that its complaint was timely filed within 60 days of Liberty's failure to respond to this demand letter.<sup>5</sup> WIDP argues that because it is a full-power station licensed to a community within the same DMA as Liberty's cable system, it is entitled to carriage on the system.<sup>6</sup> WIDP states that it provides a signal of good quality to Liberty's principal headend and is willing to take whatever steps are necessary to provide any equipment to maintain its signal quality.<sup>7</sup> WIDP notes that Liberty has 82 channels which are more than sufficient to accommodate its request.<sup>8</sup>

4. Although Liberty concedes that WIDP delivers a signal of at least -45 dBm to Liberty's principal headend, it maintains that the signal is of poor quality with ghosting and green coloring on most of the picture.<sup>9</sup> Liberty also asserts that WIDP's complaint was not timely filed. Initially, it notes that the second letter received from WIDP, which it categorizes as a formal demand for carriage, appears to have been dated August 5, 2002 and not September 10<sup>th</sup> as claimed by WIDP, but it was not received by Liberty until September 12, 2002.<sup>10</sup> Moreover, Liberty points out, in that second letter, WIDP refers back to its first letter alleging that Liberty was required to respond and/or commence carriage of its station within thirty days.<sup>11</sup> Liberty states that, by its own wording, WIDP apparently intended that its first letter be both an election notice pursuant to Section 76.64(f) of the rules and a must carry request pursuant to Section 76.61(a)(1).<sup>12</sup> If this is the case, Liberty argues, then its must carry complaint should have been filed within 60 days of Liberty's failure to respond to its August 7<sup>th</sup> letter. Liberty maintains that even if the second letter should be considered the formal demand for carriage, and the receipt date of September 12<sup>th</sup> is used, WIDP's complaint would still be late by at least one day.<sup>13</sup>

5. WIDP argues in reply that it is clear, based on Commission precedent, that WIDP's August 7<sup>th</sup> letter was an election notice and not a demand for carriage pursuant to Section 76.61(a) of the Commission's rules.<sup>14</sup> Moreover, WIDP states that, despite Liberty's contentions, the complaint was timely filed.<sup>15</sup> Pursuant to Section 76.61 of the Commission's rules, Liberty had 30 days from the receipt of WIDP's carriage request to respond. WIDP states that because its formal request for carriage was received on September 12, 2002, Liberty had until October 14, 2002 to reply. WIDP states that its complaint was filed within 60 days of Liberty's failure to respond. Finally, WIDP maintains that Liberty has provided no justification for its failure to carry WIDP. WIDP asserts that to the extent that Liberty's signal strength test may not meet the Commission's criteria, it will provide all the specialized equipment

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<sup>4</sup>*Id.* at Exhibit B.

<sup>5</sup>*Id.* at 2, citing 47 C.F.R. § 76.61(a)(5).

<sup>6</sup>*Id.* at 2.

<sup>7</sup>*Id.* at 3.

<sup>8</sup>*Id.*, citing Television & Cable Factbook 2002.

<sup>9</sup>Opposition at Exhibit 1.

<sup>10</sup>*Id.* at Exhibit 2. Liberty notes that the copy of this letter appended to WIDP's complaint at Exhibit B does not show the date of the letter.

<sup>11</sup>*Id.* at 2.

<sup>12</sup>*Id.* at 3, citing 47 C.F.R. §§ 76.64(f) and 76.61(a)(1).

<sup>13</sup>*Id.* at 3.

<sup>14</sup>Reply at 3, citing *Shop at Home, Inc. v. Armstrong Utilities, Inc.*, 13 FCC Rcd 22415 (1998); *SAH Acquisition Corporation II v. Olmstead Cable Company Corporation*, 13 FCC Rcd 22404 (1998); see also 47 C.F.R. §76.61(a).

<sup>15</sup>Reply at 4.

necessary to deliver a good quality signal to Liberty's principal headend.<sup>16</sup>

6. The 1992 Cable Act provides that a cable operator is not required to carry a local commercial broadcast station that does not deliver a good quality signal to the principal headend of a cable system.<sup>17</sup> Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, we believe that the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. With respect to the standard to be used to determine what constitutes a good quality signal at a cable system's headend, the 1992 Cable Act adopted a standard for VHF and UHF commercial stations.<sup>18</sup> For VHF commercial television stations, the standard is -49 dBm; for UHF commercial television stations, the standard is -45 dBm.<sup>19</sup>

7. In this instance, although Liberty has agreed that WIDP meets the signal strength criteria, it contends that the station delivers poor picture quality. We note, however, that Liberty has not provided any engineering evidence to substantiate this claim. As a result, we cannot conclude that WIDP fails to deliver a good quality signal to Liberty's principal headend. In any event, WIDP has committed to acquire and install, at its own expense, any and all equipment necessary to provide Liberty with a good quality signal. WIDP, by committing to provide any necessary equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.<sup>20</sup> Thus we find WIDP is entitled to mandatory carriage on the cable system at issue.

8. Finally, we note that, despite Liberty's contentions, WIDP's August 5<sup>th</sup> letter was clearly a must carry election notice and not a demand for carriage. In addition, although there is an obvious dating error on WIDP's subsequent demand for carriage, it was mailed after the earlier must carry election notice and WIDP's must carry complaint was filed within the time limit required by the Commission's rules.

### III. 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 must carry complaint filed by Ebenezer Broadcasting Group, Inc. **IS GRANTED** and Liberty Cablevision of Puerto Rico shall commence carriage of WIDP on its cable system serving Puerto Rico within sixty (60) days of the release date of this Order.

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<sup>16</sup>*Id.*

<sup>17</sup>47 U.S.C. § 534(h)(1)(B)(iii).

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*; see 47 C.F.R. § 76.55(e)(3).

<sup>20</sup>*Must Carry Order*, 8 FCC Rcd at 2991, see e.g., *WMPF, Inc.*, 11 FCC Rcd 17264 (1996); *KSLS, Inc.*, 11 FCC Rcd 12718 (1996); see also 47 U.S.C. § 534(h)(1)(B)(iii).

10. **IT IS FURTHER ORDERED** that WIDP shall notify Liberty in writing of its channel position election within thirty (30) days of the release date of this Order, pursuant to Section 76.57 and 76.64(f) of the Commission's rules.<sup>21</sup>

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>21</sup>47 C.F.R. §§ 76.57 and 76.64(f).

<sup>22</sup>47 C.F.R. § 0.283.