

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

In the Matter of:
Jovon Broadcasting Corp.
v.
RCN Corp.
Request for Mandatory Carriage
of Television Station WJYS-TV, Hammond,
Indiana
CSR 6116-M

MEMORANDUM OPINION AND ORDER

Adopted: April 25, 2003

Released: April 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Jovon Broadcasting Corporation ("Jovon"), licensee of television broadcast station WJYS-TV (Ind. Ch. 62), Hammond, Indiana ("WJYS-TV"), has filed a must carry complaint and request for declaratory ruling pursuant to Sections 76.7 and 76.61(a)(3) of the Commission's rules, claiming that RCN Communications Corporation ("RCN") has failed to commence carriage of WJYS-TV on its cable systems serving Chicago and Skokie, Illinois (the "Communities"), as required by the Commission's rules. RCN filed an Opposition to the Complaint and Jovon filed a Reply. For the reasons stated below, we grant the relief Jovon seeks.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, 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, such as WJYS-TV, 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. The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

1 47 C.F.R. §§ 76.7 and 76(a)(3).

2 8 FCC Rcd 2965, 2976-77 (1993).

3 Section 614(h)(1)(C) of the Communications Act, 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) of the Commission's rules requires that a commercial broadcast station's market be defined by Nielsen Media Research's DMAs. See 47 C.F.R. § 76.55(e).

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market as the cable system is not entitled to carriage.⁴ One method of doing so is for the cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to the cable system's principal headend.⁵ For UHF commercial television stations such as WJYS-TV, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45dBm.⁶

4. A station that initially fails to provide the requisite over-the-air signal quality to a cable system's principal headend still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁷ Moreover, at its own expense, the licensee may use a microwave facility, satellite system,⁸ fiber optic link, or other technical means to improve the quality of a station's signal to an acceptable level.⁹

III. DISCUSSION

5. Jovon states that RCN does not dispute that the station is entitled to carriage on its cable systems once RCN receives a good quality signal at its headends. Instead, RCN disputes the Station's right to use its digital television transmitter as an alternative delivery mechanism to provide a good quality signal.¹⁰ Jovon argues that if the Commission permits the use of translators, microwave transmitters, or even satellite platforms as alternative delivery systems, then it should also permit the use of DTV transmitters for the same purpose.¹¹ Jovon asserts that the digital must carry rights of WJYS-DT are not at issue here so long as WJYS-DT simulcasts WJYS-TV's signal 24 hours per day, seven days per week. Jovon adds that its conversion of WJYS-TV's digital signal to an analog format would eliminate any concerns that might be raised by RCN with regard to compatibility with digital set top boxes, signal strength standards, and channel positioning.¹²

6. RCN states that it is not obligated to carry Jovon's analog television signal unless and until WJYS-TV provides a good quality signal to its system's principal headend.¹³ It further states that the Commission does not require cable operators to carry a broadcast station's digital television signal until the station builds and activates its digital facility and returns its analog license to the government. According to RCN, the Commission should not impose a digital television carriage obligation disguised as an alternate means of providing a good quality analog signal. RCN argues that Jovon's request should be dismissed because it constitutes a premature attempt to impose blanket digital must carry obligations

⁴ See *Must Carry Order*, 8 FCC Rcd at 2991.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁷ *Must Carry Order*, 8 FCC Rcd at 2991.

⁸ See Letter dated December 9, 1994 from (former) Cable Services Bureau Chief Meredith J. Jones to John R. Feore and Leonard Kennedy, attorneys at law, Dow Lohnes, and Albertson (approving of satellite delivery of local television station signal to cable system headend for good quality signal purposes).

⁹ See *Must Carry Order*, 8 FCC Rcd at 2991.

¹⁰ Complaint at 4.

¹¹ *Id.* at 7.

¹² *Id.* at 8.

¹³ RCN Opposition at 4-5.

on cable operators before any such obligation may be imposed as a result of the Commission's ongoing digital broadcast signal carriage rulemaking proceeding.¹⁴

7. Jovon, in Reply, states that it is seeking carriage of its analog television signal pursuant to the analog carriage requirements; the signal would be provided to the input terminals of RCN's headend through the intermediate use of Commission authorized DTV facilities rather than through use of other, previously approved specialized equipment, such as microwave relays.¹⁵ According to Jovon, RCN's system, facilities, and carriage of WJYS will operationally not differ from that which would exist if the Station delivered the analog signal to RCN's headend via a digital microwave relay system that down-converted the digital signal back to analog at the headend.¹⁶ Jovon asserts that employing a digital television transmitter as the Station's alternative signal delivery mechanism would no more confer must carry rights on WJYS-DT than Jovon's use of a low power translator would confer must carry rights on that translator.¹⁷

8. WJYS-TV operates on UHF Channel 62 and is a full power commercial television station licensed to serve Hammond, Indiana, which is in the Chicago DMA.¹⁸ RCN operates cable television systems that are also in the Chicago DMA.¹⁹ WJYS-TV, therefore, qualifies as a local station entitled to mandatory carriage on these cable systems.²⁰

9. We find that RCN has not mounted a sustainable defense against carriage of WJYS-TV's signal. Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage if it provides specialized equipment that will improve the signal to the requisite level.²¹ In addition, a station may generally use any delivery means at its disposal to provide a good quality signal to the cable operator's headend. As long as WJYS-TV transmits exactly the same content over its digital signal as is contained in its analog signal, and it pays the cost of delivering such a signal to the principal headend, it may do so in accordance with the Commission's rules and policies. This situation is analogous to the sanctioned practice of a station digitally transmitting its signal to a cable operator's principal headend using fiber-optic cables.

10. The arrangement proposed by Jovon does not constitute "dual carriage" because only WJYS-TV's analog signal is entitled to mandatory carriage. This decision does not accord mandatory carriage rights to WJYS-DT or its digital signal. Rather, we find that WJYS-TV may use its digital transmitter to deliver a good quality analog signal to the RCN headend. We need not entertain WJYS-TV's request for a declaratory ruling because we have granted the Station's complaint based on the specific facts before us.

IV. ORDERING CLAUSES

11. 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 Jovon Broadcasting Corp. **IS GRANTED**

¹⁴ *Id.* at 17.

¹⁵ Jovon Reply at 5.

¹⁶ *Id.*

¹⁷ *Id.* at 8.

¹⁸ Complaint at 3.

¹⁹ *Id.*

²⁰ *See Must Carry Order*, 8 FCC Rcd at 2976-77 (1993).

²¹ *Id.* at 2990-91.

with respect to the cable systems owned by RCN Communications Corporation.

12. **IT IS FURTHER ORDERED** that RCN Communications Corporation **SHALL COMMENCE CARRIAGE** of television station WJYS-TV on Channel 62 of its cable systems within 60 days from the date that station WJYS-TV delivers a good quality signal to the principal headends of each cable system.

13. This action is taken pursuant to authority delegated pursuant to Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

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²² 47 C.F.R. § 0.283.