

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

In the Matter of:
Sonshine Family Television, Inc.
v.
Comcast Corporation
Request for Mandatory Carriage of
Television Station WBPH,
Bethlehem, Pennsylvania
CSR-6072-M
CSR-6077-M
CSR-6079-M
CSR-6080-M
CSR-6082-M

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 2003

Released: May 7, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Sonshine Family Television, Inc. ("Sonshine"), licensee of television broadcast station WBPH (Ch. 60), Bethlehem, Pennsylvania ("WBPH") filed the above-captioned complaints for mandatory carriage against Comcast Corporation ("Comcast") for failing to carry WBPH on Comcast's cable systems serving various communities located in the Philadelphia, Pennsylvania market (the "Comcast Communities"). Comcast filed oppositions in three of the above-captioned matters to which Sonshine replied.

1 CSR-6072-M, Comcast Cablevision of Pennsylvania, LLC, CSR-6079-M, Comcast Cablevision of Southeast Pennsylvania, Inc., and CSR-6080-M, Comcast Cablevision of Mercer County, Inc. are opposed proceedings. In the two unopposed matters, CSR-6077-M and CSR-6082-M, Sonshine has identified the cable operator as Comcast Cable and identified the communities served. See infra n.2. This decision applies to any Comcast subsidiary that operates cable systems in the communities identified by petitioner.

2 The cable communities subject to the petitions are as follows: CSR-6072-M - Ambler Borough, Broomall, Hatoboro, Haverford, Horsham Twp., Lansdale, Lower Gwynned Twp., Marple Twp., Montgomery Twp., North Wales, Plymouth Twp., Radnor, Springfield Twp., Towamencin, Upper Dublin Twp., Upper Gwynned Twp., Whitmarsh Twp., and Whitpain Twp., Pennsylvania; CSR-6077-M - Buckingham, Chalfont, Doylestown, Ivyland, New Britain, New Hope Borough, Newtown, Northampton Twp., Plumstead, Solebury, Tinicum, Warrington, and Warwick, Pennsylvania; CSR-6079 - Bally, Bechtelsville, Boyertown, Bridgeport, Colledgeville, Conshohocken, Douglas Twp., Graterford, Gulph Mills, Hereford, King of Prussia, Limerick Twp., New Hanover Twp., Norristown, Oaks, Pennsburg, Phoenixville, Pottsville, Perkiomen, Red Hill, Royersford, Schwenksville, Spring City, Swedeland, and Upper Merion Township, Pennsylvania; CSR-6080-M - Ewing, Hopewell, Lawrence, Pennington, and Trenton, New Jersey; and CSR-6082-M - Reading and Hamburg, Pennsylvania.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended (“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, such as WBPH, are entitled to assert mandatory carriage rights on cable systems located within the station’s market.³ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁴ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

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 is not entitled to carriage.⁵ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system’s principal headend.⁶ For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system’s principal headend is -45 dBm.⁷ 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 rights. Under the Commission’s rules, a television station may provide a cable operator, at the station’s expense, with specialized equipment to improve the station’s signal to an acceptable quality at a cable system’s principal headend.⁸

III. DISCUSSION

4. In support of its complaint, Sonshine states that WBPH is a full-power commercial television station licensed to Bethlehem, Pennsylvania, located in the Philadelphia, Pennsylvania DMA.⁹ Petitioner states further that Comcast operates cable television systems that are also located in the Philadelphia DMA.¹⁰ Sonshine asserts that on September 30, 2002, it formally notified Comcast of its mandatory carriage elections and requested carriage on the systems in the Comcast Communities.¹¹ Sonshine contends that Comcast did not respond to its demands for mandatory carriage within 30 days of receipt of such requests as required by the Commission’s rules,¹² and requests that the Commission order

³ 8 FCC Rcd 2965, 2976-2977 (1993).

⁴ 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) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e).

⁵ *See Must Carry Order*, 8 FCC Rcd at 2990.

⁶ 47 C.F.R. § 76.55(c)(3).

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

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

⁹ Petitions at 2.

¹⁰ *See supra* n.2 (Comcast Communities).

¹¹ *Id.* at 1.

¹² *Id.* at 2; *see* 47 C.F.R. § 76.61(a)(2).

Comcast to commence carriage of the station's signal on channel 60. Sonshine states that it will, if necessary, provide and install at its own expense, the appropriate equipment to achieve a -45 dBm or better signal at the systems' headends.¹³

5. Comcast argues in the three contested matters that WBPH fails to deliver the required signal strength of -45dBm at the systems' principal headends and that the systems are therefore not obligated to carry the station's signal.¹⁴ In support, Comcast provides engineering data which confirms that the station does not currently provide the required signal strength at the systems' principal headends.¹⁵

6. In reply, Sonshine contests Comcast's engineering methodology and restates its intent to provide and install specialized equipment for receipt of the station at the cable systems' headends. Sonshine argues that the station has met its burden by committing to provide the equipment necessary for receipt of a good quality signal.

7. Section 76.55 of the Commission's rules provides that commercial television broadcast stations, such as WBPH, are entitled to carriage on cable systems located in the same DMA.¹⁶ As noted above, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.¹⁷ We find that Comcast has failed to meet this burden.

8. A review of WBPH's signal strength tests provided by Comcast in the three contested matters indicate that all of the tests were conducted employing sound engineering practices and demonstrate that WBPH does not presently provide a good quality signal to Comcast's principal headends. We note, however, that WBPH has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet the signal strength criteria to provide, at their own expense, the equipment necessary for delivery of a good quality signal to a cable system's principal headend.¹⁸ WBPH has made this commitment and by doing so is eligible for mandatory carriage on Comcast's systems when the station provides a signal which meets the Commission's signal strength criteria.

9. Finally, concerning Sonshine's channel positioning request, we find that petitioner has properly requested carriage on channel 60, WBPH's over-the-air broadcast channel. Pursuant to the Commission's rules, cable operators must comply with channel positioning requirements absent a compelling technical reason.¹⁹

¹³ Petitions at 3; *see* 47 C.F.R. § 76.55(c)(3).

¹⁴ Oppositions at 2.

¹⁵ *Id.*, Exhibit 1.

¹⁶ 47 C.F.R. § 76.55.

¹⁷ *See Must Carry Order*, 8 FCC Rcd at 2990.

¹⁸ 47 C.F.R. § 76.55(c)(3).

¹⁹ 47 C.F.R. § 76.57; *see Must Carry Order*, 8 FCC Rcd at 2988.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the mandatory carriage carry complaints filed by Sonshine Family Television, Inc., licensee of television broadcast station WBPH, Bethlehem, Pennsylvania, against Comcast **ARE GRANTED**.

11. **IT IS FURTHER ORDERED** that Comcast **SHALL COMMENCE CARRIAGE** of WBPH's signal on channel 60 of its cable systems serving the Comcast Communities specified in CSR-6077-M and CSR-6082-M within sixty (60) days from the date of the release of this order.

12. **IT IS FURTHER ORDERED** that Comcast **SHALL COMMENCE CARRIAGE** of WBPH's signal on channel 60 of its cable systems serving the Comcast Communities specified in CSR-6072-M, CSR-6079-M, and CSR-6080-M within sixty (60) days from the date that WBPH delivers a good quality signal to the systems' principal headends.

13. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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²⁰ 47 C.F.R. § 0.283.