

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

In the Matter of:)	
)	
Sonshine Family Television, Inc.)	
v.)	CSR-6093-M
Comcast Cable)	
)	
Request for Carriage)	

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., licensee of television broadcast station WBPH (Ch. 60), Bethlehem, Pennsylvania (“WBPH”) filed the above-captioned complaint against Comcast Cable (“Comcast”), for its failure to carry WBPH on its cable system serving the communities of Bensalem Township, Falls Township, Lower Southampton Township, Morrisville Borough, Tullytown Borough, Upper Southampton Township, and Warminster Township, Pennsylvania (the “Comcast Communities”). A response to this complaint was filed on behalf of Comcast to which WBPH replied. For the reasons discussed below, we grant the 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 (“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

3. In support of its complaint, WBPH states that it is an authorized full-service UHF television station licensed to a community located within the Philadelphia, Pennsylvania DMA as are the

¹8 FCC Rcd 2965, 2976-2977 (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). Section 76.55(e) of the Commission’s rules, 47 C.F.R. §76.55(e), requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. *See* 47 C.F.R. § 76.55(e).

Comcast Communities. WBPH indicates that by letter dated September 30, 2002, it elected must carry status on Comcast's cable system, pursuant to Section 76.64(f) of the Commission's rules, beginning with the January 1, 2003 election period and, at the same time, requested carriage on Comcast's system, pursuant to Section 76.61(a) of the Commission's rules.³ WBPH states that Comcast never responded to this request and it accordingly filed the instant complaint within 60 days of Comcast's failure to respond.⁴

WBPH notes that, although Comcast never formally responded to its carriage request, Comcast has cooperated with WBPH to the extent of arranging for signal strength tests at its system's principal headend.⁵ WBPH states that the results of these tests showed that with the appropriate equipment WBPH would be able to provide a signal of good quality to the cable system's principal headend.⁶ WBPH states that it has made it clear to Comcast that it will bear the costs of purchasing and installing such equipment.⁷

4. WBPH states further that, in the course of arranging for the temporary placement of an antenna on Comcast's headend tower prior to the signal strength tests, it was informed by a representative of American Tower, the tower owner, that, if permanent installation of an antenna was required to deliver a good quality signal, WBPH would be required to enter into a lease agreement with American Tower. WBPH argues that the Commission has repeatedly ruled that cable operators cannot require stations seeking must carry status to pay rent for antenna space.⁸ WBPH requests that the Commission prohibit Comcast from requiring it to enter into any such lease agreement.

5. In response, Comcast argues that WBPH's complaint should be dismissed as moot because it has agreed to carry WBPH on its system within 60 days of the date that WBPH delivers the equipment necessary for the receipt of a good quality signal.⁹ In addition, Comcast has determined that no tower lease agreement is necessary and it has informed WBPH of that fact.¹⁰ WBPH maintains in reply that, although it met the conditions set by Comcast and delivered the required equipment on February 13, 2003, Comcast denied WBPH permission to install the equipment at its headend.¹¹ Because Comcast failed to meet its pre-set conditions, WBPH argues that the subject complaint is not moot and should not be dismissed.

6. We agree with WBPH and will grant its complaint. We find that the representations made by WBPH demonstrate that it is a local commercial television station qualified for carriage on Comcast's cable system. Under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market as a cable operator is not entitled to carriage.¹² Although both parties concur that initial signal strength tests indicated that WBPH

³Complaint at Exhibit A; *see also* 47 C.F.R. §§ 76.64(f) and 76.61(a).

⁴Complaint at 2.

⁵*Id.* WBPH states that these tests took place on November 13, 2002.

⁶*Id.*

⁷*Id.* at Exhibit B.

⁸*Id.* at 4, citing *Sonshine Family Television, Inc. v. Suburban Cable TV*, 14 FCC Rcd 15391, 15395 (1999); *Suburban Cable TV Co., Inc. and Lenfest Atlantic, Inc.*, 16 FCC Rcd 10790, 10797 (2001).

⁹Reponse at Exhibit 1.

¹⁰*Id.*

¹¹Reply at 2.

¹²*See Must Carry Order*, 8 FCC Rcd at 2990.

did not deliver a good quality signal, WBPH 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 signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.¹³ WBPH has made this commitment and by doing so is eligible for mandatory carriage by Comcast on the subject cable system when it provides a signal which meets the Commission's signal strength criteria.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Sonshine Family Television, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534. Comcast Cable **IS ORDERED** to commence carriage of WBPH on its cable system serving Bensalem Township, Falls Township, Lower Southampton Township, Morrisville Borough, Tullytown Borough, Upper Southampton Township, and Warminster Township, Pennsylvania, sixty (60) days from the date on which WBPH delivers a good quality signal to the cable system's principal headend.

8. **IT IS FURTHER ORDERED** that WBPH shall notify Comcast of its channel position elections thirty (30) days from the date in delivers a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹⁴

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹³47 C.F.R. § 76.5(c)(3).

¹⁴47 C.F.R. §§ 76.57 and 76.64(f).

¹⁵47 C.F.R. § 0.283.