

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

In the Matter of:
WMTY, Inc.
v.
West Alabama TV Cable Co., Inc.
Request for Carriage
CSR-6143-M

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2003

Released: August 18, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. WMTY, Inc., licensee of low power television station W46DF, Hamilton, Alabama ("WMTY" or the "station") filed the above-captioned complaint against West Alabama TV Cable Co., Inc. ("Alabama Cable") for its failure to carry W46DF on its cable television systems in Belk, Brilliant, Fayette, Hamilton, and Winfield, Alabama (the "cable communities").

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" low power television ("LPTV") stations in certain limited circumstances.

1Complaint at 1.

247 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

347 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

### III. DISCUSSION

3. In support of its complaint, WMTY states that Alabama Cable carried the station in the cable communities until December 2002 when it informed WMTY that it was dropping the station. WMTY objected in letters dated January 8, January 14, and February 6, 2003. WMTY indicates that Alabama Cable replied on February 7, 2003, claiming that the station did not provide Alabama Cable's new principal headend in Winfield with a good quality signal, but did not provide support for this claim. WMTY further explains that on March 7 it met with Alabama Cable at its Winfield headend, and tested the quality of the station's signal, which both parties agreed was adequate, and that on March 10 it again requested by letter that Alabama Cable resume carriage of the station. According to WMTY, Alabama Cable replied on April 7, and declined to carry the station because tests conducted March 21-22 indicated that the station did not provide a good quality signal. WMTY calls these tests "a fabrication."<sup>4</sup> WMTY also asserts that it is a qualified LPTV station based on the above Commission requirements, is eligible for must carry status in the cable communities, and provides evidence to support these claims.<sup>5</sup>

4. Alabama Cable in its opposition explains that it serves the cable communities from its headend in Winfield. Alabama Cable further explains that WMTY is not a qualified low power television station for must carry purposes because it fails to provide a good quality signal to its headend. According to Alabama Cable, it conducted signal strength tests of the station's signal on February 7, March 21 and 22, and May 5 and 6, 2003, and that these tests reflected that WMTY did not consistently deliver a good quality signal. Regarding the March 7 test that WMTY claims occurred, Alabama Cable states that this was a single, informal test, and that there is no documentation regarding the results of this test.<sup>6</sup>

5. WMTY's reply objects that Alabama Cable filed its opposition late without explanation. Concerning the March 7 joint test with Alabama Cable, WMTY claims that Alabama Cable agreed that WMTY's signal was acceptable. With regard to the tests conducted by Alabama Cable, WMTY asserts that these tests failed to follow good engineering practices. According to WMTY, the February 7 test made an "unsupported claim" of an inadequate signal. The March 21-22 tests also failed to comply with the Commission's requirements because these tests did not include "sketches... and a description of the methodology used for processing the signal at issue."<sup>7</sup> WMTY further explains that "the tests states that the Station is 25 miles away, when in fact that Station's transmitter is only 12 miles from the headend, making the reliability of the tests highly suspect."<sup>8</sup> Likewise, WMTY states that the May 5-6 tests failed to provide sketches and describe methodology. WMTY also asserts that during early May, the station experienced technical problems because lightning and flooding had damaged equipment. WMTY requests that the Commission grant its must carry complaint "conditioned on the Station providing a good quality signal to the headend once its transmitter and other damaged broadcast equipment are repaired, and that signal quality tests be *jointly* conducted" by Alabama Cable and WMTY.<sup>9</sup>

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<sup>4</sup>Complaint at 7-10, Exhibits III through XI, and Declaration of Keith Nichols, VP, WMTY.

<sup>5</sup>*Id.* at 1-7 and Exhibit I.

<sup>6</sup>Opposition at 1-4 and Exhibits A through E. Section 76.55(c)(3) of the Commission's rules requires a low power television station to deliver a minimum signal strength of -45 dBm. 47 C.F.R. §76.55(c)(3). Alabama Cable also points out the "Unlike a full power commercial broadcaster, an LPTV cannot resurrect its complaint with promises to deliver a good quality signal." Opposition at 4 n.13, citing *Implementation of Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd. 1965, 2991 (1993).

<sup>7</sup>Reply at 2-4, citing 47 C.F.R. §76.61(a)(2), and Exhibits A and B.

<sup>8</sup>Reply at 4.

<sup>9</sup>*Id.* at 5-7, and Exhibit D (emphasis original).

6. In general, as indicated below, we find in favor of WMTY's complaint and request for must carry status. The central issue in this proceeding is whether the station delivers a good quality signal to the headend of the cable television system.<sup>10</sup> The burden of proving that a station does not provide a good quality signal rests with the cable operator.<sup>11</sup> Although Alabama Cable conducted several tests concerning the reception of W46DF's signal, which Alabama Cable states reflected that the station failed to consistently deliver a signal of adequate strength, these tests did not comply with the Commission's standards.<sup>12</sup>

7. Alabama Cable's February 7, 2003, test did not provide the supporting documentation required by the Commission.<sup>13</sup> The March 21-22 tests provided incomplete documentation. For example, the March tests did not provide the calibration date or age of the equipment used, the make and model number of the antenna, the range and radiation patterns of the antenna, and diagrams or sketches of the test configuration.<sup>14</sup> Also, the test data states that the distance to the station is 25 miles whereas, based on the latitudes and longitudes for the cable headend and the station provided by the parties, we calculate that the distance is about 12.5 miles.<sup>15</sup> Regarding the May 5-6 tests, incomplete documentation was also provided. The tests did not indicate the antenna's make, model, range and radiation patterns. Further, no diagrams or sketches of the test configuration were provided.<sup>16</sup> Sketches and diagrams are useful in evaluating how tests were conducted and the reliability of test results. We note that in the May 5-6 tests, two of the six readings reflected an adequate signal whereas the other readings were slightly below the acceptable level.<sup>17</sup> It is possible that the test configuration was responsible for the inadequate readings, and sketches and diagrams would assist us in evaluating this possibility. We also note that the test results stated the distance to the station was 15 miles. Consequently, we will grant WMTY's complaint.<sup>18</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, and Sections 76.55(d) and 76.56(b)(3) of the Commission's rules, 47 C.F.R. §§76.55(d) and 76.56(b)(3), that the complaint filed by WMTY, Inc. **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that West Alabama TV Cable Co. Inc. shall commence carriage of W46DF within sixty days after the release date of this order in the absence of new tests that demonstrate that W46DF does not provide an adequate signal. W46DF shall be carried on the channel of the cable system specified by Section 76.57 of the Commission's rules, 47 C.F.R. §76.57.

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<sup>10</sup>47 C.F.R. §76.55(d)(4).

<sup>11</sup>*Citrus County Association v. Mickelson Media*, 16 FCC Rcd 20,713, 20,717 (2001).

<sup>12</sup>47 C.F.R. §76.61(a)(2); *see, e.g., Complaint of Channel 5*, 8 FCC Rcd 4953 (1993).

<sup>13</sup>47 C.F.R. §76.61(a)(2).

<sup>14</sup>*Id.*

<sup>15</sup>Distance was determined using a program available at [www.indo.com/distance/index](http://www.indo.com/distance/index).

<sup>16</sup>*Supra* n.12.

<sup>17</sup>Opposition at Exhibit C; 47 C.F.R. §76.55(c)(3).

<sup>18</sup>If Alabama Cable believes that W46DF does not provide a good quality over-the-air signal to its Winfield headend, it can conduct further tests in accordance with Section 76.61(a)(2) of the Commission's rules. 47 C.F.R. §76.61(a)(2). If these tests indicate that W46DF does not provide a good quality signal, Alabama Cable may submit these test results with the required documentation as part of a petition for reconsideration.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

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