

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

In the Matter of: )
Senda Broadcasting Network )
v. ) CSR-6004-M
Adelphia Communications, Cable Television )
Company of Greater San Juan )
Request for Mandatory Carriage )
of Television Station W15BB, San Juan, Puerto )
Rico )

MEMORANDUM OPINION AND ORDER

Adopted: February 11, 2003

Released: February 13, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Senda Broadcasting Network ("Senda"), licensee of low power television station W15BB, Channel 15, San Juan, Puerto Rico ("W15BB"), has filed a complaint pursuant to Sections 76.61(a) and 76.7 of the Commission's rules, asserting mandatory carriage rights on Adelphia Communications' ("Adelphia") cable system serving San Juan and Levittown, Puerto Rico (the "cable communities").

II. BACKGROUND

2. The Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" LPTV stations in certain limited circumstances. An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's rules will be considered "qualified" if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the LPTV station addresses local news and informational needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license; (3) complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community

1 47 C.F.R. §§ 76.7 and 76.61(a).
2 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

within the county or other political subdivision (of a State) served by the cable system.<sup>3</sup>

### III. DISCUSSION

3. W15BB states that pursuant to Section 76.55(d) of the Commission rules, it is a “Qualified Low Power Station” and thus entitled to mandatory carriage on Adelphia’s cable system.<sup>4</sup> W15BB maintains that on March 5, 2002 it sent via certified mail, its demand for mandatory carriage on Adelphia’s cable system serving San Juan and Levittown, Puerto Rico.<sup>5</sup> In a March 20, 2002 letter, Adelphia denied W15BB carriage on its system on the grounds that W15BB did not meet all of the LPTV criteria required to qualify for must carry status.<sup>6</sup> In response, on April 18, 2002, W15BB stated that it had failed to inform Adelphia that it was no longer a LPTV and had held a commercial class A license since August 9, 2001.<sup>7</sup> In reply, Adelphia sent a May 15, 2002 letter that acknowledged W15BB’s Class A status, but stated that the station still had the same limited must carry rights as LPTV stations and was therefore required to comply with Part 74 of the FCC’s rules as well as other eligibility criteria.<sup>8</sup> W15BB asserts that Adelphia is required to carry its signal on its over-the-air channel (Channel 16 or other acceptable channel) as required by Section 76.55(d) of the Commission’s rules.<sup>9</sup>

4. In opposition, Adelphia argues that the Commission should dismiss W15BB’s complaint because W15BB is not a qualified LPTV station because it does not fully meet the criteria established in Section 76.55(d) of the Commission’s rules.<sup>10</sup> Adelphia maintains that the population of San Juan, Puerto Rico, W15BB’s city of license, was well in excess of 35,000 on June 30, 1990.<sup>11</sup> According to the 1990 Census, San Juan, Puerto Rico’s population at that time was in excess of 400,000.<sup>12</sup> Second, Adelphia contends that there are “numerous” full power television stations that are licensed to San Juan that are already carried in the cable communities. Third, Adelphia contends that W15BB has failed to prove that it consistently broadcasts programming that would “address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of full power stations from the low power station’s community of license.”<sup>13</sup> Adelphia also notes that the cable communities are located within at least the Grade A contour of several San Juan full power stations that are carried on its system, which provide news and informational programming. Adelphia further contends that W15BB has not quantified the amount of its “local” programming or provided examples of programming that addresses news and informational needs of the cable communities. Finally, Adelphia asserts that W15BB has failed to present evidence that it adheres with Section 73.671 of the Commission’s rules regarding adequate children’s programming and has not identified any program offerings specifically targeted toward children.

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<sup>3</sup> 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

<sup>4</sup> Complaint at 1.

<sup>5</sup> *Id.* at Exhibit I (Letter from Ms. Evelyn Aimee De Jesus, attorney for Senda to Mr. Francisco Toste Santana of Adelphia).

<sup>6</sup> *Id.* at Exhibit II (Letter from Mr. Francisco Toste Santana to Ms. Evelyn Aimee De Jesus).

<sup>7</sup> *Id.* at Exhibit III (Letter from Ms. Evelyn Aimee De Jesus to Mr. Francisco Toste Santana).

<sup>8</sup> *Id.* at Exhibit IV (Letter from Mr. Francisco Toste Santana to Ms. Evelyn Aimee De Jesus).

<sup>9</sup> Complaint at 2.

<sup>10</sup> *Id.* at 2 – 3. *See* 47 C.F.R. § 76.55(d).

<sup>11</sup> Opposition at 2 – 3.

<sup>12</sup> *Id.* W15BB “disagrees” with Adelphia’s conclusion regarding this requirement in its Complaint but it fails to explain why it disagrees.

<sup>13</sup> *Id.* at 3 – 4.

5. We deny W15BB's complaint. The Commission has stated that an LPTV station will be entitled to must carry status only if it meets all of the requirements established in Section 614(h)(2) of the Communications Act and Section 76.55(d) of the Commission's rules.<sup>14</sup> We first note that, contrary to the statement made in its correspondence with Adelphia, W15BB's status as a Class A low power station does not alter the requirement that it meet the same criteria that other low power stations must meet to assert must carry rights. In that regard, the record shows that W15BB does not meet all of the requirements established in those sections. Specifically, W15BB failed to establish that it addresses local news and informational needs that are not addressed by full power stations because of the geographic distance from the low power station's community of license established in Section 614(h)(2)(D) of the Communications Act.<sup>15</sup> Finally, W15BB has failed to establish that the population of its city of license did not exceed 35,000 and there was no full power television broadcast station licensed to any community within the county or other political subdivision served by the cable system.

#### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, that the complaint filed by Senda Broadcasting Network **IS DENIED** pursuant to Section 614(h) of the Communications Act, as amended, 47 U.S.C. § 534(h).

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>16</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>14</sup> See *Implementation of Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Issues*, 8 FCC Rcd 2965, 2981 (1993).

<sup>15</sup> See 47 U.S.C. § 534(h)(2)(D).

<sup>16</sup> 47 C.F.R. § 0.283.