

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

In the Matter of:
Tri-State Christian TV, Inc.
v.
Charter Communications
Request for Mandatory Carriage
of Television Station WDYR-LP
Dyersburg, Tennessee
CSR-5961-M

MEMORANDUM OPINION AND ORDER

Adopted: January 10, 2003

Released: January 14, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Tri-State Christian TV, Inc., licensee of low power television station ("LPTV") WDYR-LP ("WDYR"), Dyersburg, Tennessee, filed a complaint pursuant to Sections 76.61(a) and 76.7 of the Commission's rules, asserting mandatory carriage rights for WDYR on Charter Communication's ("Charter") cable system serving Newbern, Troy, Trimble, Obion and Union City, Tennessee ( the "cable communities").

II. BACKGROUND

2. Both 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. WDYR filed its complaint on August 9, 2002. WDYR states that it is a Class A low power television station licensed to Dyersburg, Tennessee and that pursuant to Section 76.55(d) of the Commission rules, it is a "Qualified Low Power Station."<sup>4</sup> WDYR maintains that on November 28, 2001 it "reiterated" its demand for mandatory carriage on Charter's cable system serving Newbern, Troy, Trimble, Obion and Union City, Tennessee.<sup>5</sup> Two months later, in a February 4, 2002 letter, Charter denied WDYR carriage on the system at issue on the grounds that the distance between the Station's community of license and Charter's headend in Jackson, Tennessee is greater than 35 miles, and because WBBJ, a full power television station, is licensed to one of the communities served by the Jackson headend.<sup>6</sup> In its February 4, 2002 letter, Charter noted that it had collapsed four headends serving the western part of Tennessee and that that area is now served by the Jackson, Tennessee headend.<sup>7</sup> In response, on February 18, 2002, WDYR again demanded carriage "on the subscriber base represented by the former principal headend facilities located in Newbern, Troy, Trimble, Obion and Union City," Tennessee, arguing that "physical elimination of a principal headend facility does not relieve a cable operator of its duty to provide mandatory carriage to the subscriber base formerly served by that headend," and stated that it was not seeking carriage on the Jackson system.<sup>8</sup> On March 27, 2002 and June 10, 2002, WDYR once again "reiterated" its demand for mandatory carriage "on the cable headends located in Newbern, Troy, Trimble, Obion and Union City, TN and any other facility that has been physically eliminated by Charter's fiber optic expansion."<sup>9</sup> WDYR maintains that Charter did not respond to its "final" must carry demand letter dated June 10, 2002.<sup>10</sup> WDYR asserts that Charter is required to carry its signal on its over-the-air channel (Channel 33) as required by Section 76.55(d) of the Commission's rules.<sup>11</sup>

4. In opposition, Charter argues that the Commission should dismiss WDYR's complaint because it was untimely filed.<sup>12</sup> In support, Charter asserts that WDYR's complaint was not filed within the 60-day limit after it was denied mandatory carriage or the cable operator failed to respond in writing within 30 days of receipt of a must carry request, as established in Section 76.5(a)(5) of the Commission's rules.<sup>13</sup> Charter maintains that WDYR should have filed its complaint within 60 days after Charter's letter denying WDYR mandatory carriage on February 2, 2002.<sup>14</sup> Also, Charter argues that WDYR is not a qualified LPTV because it does not fully meet the criteria established in Section 76.55(d) of the

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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 1 (Letter from Mr. Michael J. Daly of Tri-State Christian TV, Inc. to Mr. Curtis Persons of Charter).

<sup>6</sup> *Id.* (Letter from Mr. David Oldani to Mr. Michael J. Daly).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (Letter from Mr. Michael J. Daly to Mr. David Oldani).

<sup>9</sup> *Id.* (Letters from Mr. Michael J. Daly to Mr. David Oldani).

<sup>10</sup> Complaint at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

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

Commission's rules.<sup>15</sup> First, Charter maintains that the distance between the Station and Charter's principal headend located in Jackson, Tennessee exceeds the statutorily mandated 35-mile limit for a qualified LPTV station.<sup>16</sup> Charter asserts that its Jackson headend, which has served the cable communities since July 2001, was designated as its "principal headend" in accordance with Sections 76.5(pp) and 76.1708 of the Commission's rules.<sup>17</sup> Charter asserts it collapsed its headends for legitimate business and engineering purposes, and not to avoid carrying WDYR.<sup>18</sup> Second, Charter contends that WDYR does not broadcast "programming that would address local news and informational needs" as required by Section 76.55 of the Commission's rules because WDYR's programming is used by other Tri-State Christian TV, Inc. stations nationwide, and thus, does not address the news and informational needs of any of the particular cable communities.<sup>19</sup> In addition, Charter argues that WDYR ignores the fact that its Jackson system carries several full power television stations licensed in and around Jackson that "already and adequately serve the local news and informational needs of the subscribers within" the cable communities.<sup>20</sup>

5. In its reply, WDYR reiterates that it is a qualified LPTV station for must carry purposes as it provides "significant local public affairs, informational, and children's programming" to Dyer County and the cable communities.<sup>21</sup> WDYR maintains that Charter carried its signal in Troy and Newbern, Tennessee up until the time Charter designated the Jackson, Tennessee headend as its principal headend.<sup>22</sup> In addition, WDYR contends that Charter's designation of the Jackson, Tennessee headend as its principal headend is invalid because Charter failed to provide notice of the change to WDYR as required by Section 76.1607 of the Commission's rules.<sup>23</sup> Moreover, WDYR maintains that it filed a timely must carry complaint on August 9, 2002, because even as late as June 21, 2002, when Charter wrote that it was re-evaluating WDYR's request, there was confusion over whether Charter was responding as if WDYR was seeking carriage in Jackson, Tennessee, instead of Newbern, Troy, Trimble, Obion and Union City, Tennessee.<sup>24</sup> WDYR asserts that from the correspondence it exchanged through June 10, 2002 with Charter, WDYR understood Charter's earlier responses to be directed toward carriage in Jackson, Tennessee and not the communities in question.<sup>25</sup> According to WDYR, this is further evidenced by Mr. Oldani's June 21, 2002 E-mail where he wrote that Charter was re-evaluating its mandatory carriage responsibilities on the headends serving the cable communities.<sup>26</sup> Therefore, WDYR contends that where there is uncertainty as to whether or not a rejection of carriage demand has occurred, it is not appropriate to dismiss a must carry complaint on the basis of untimeliness.<sup>27</sup> WDYR also argues that the instant complaint should be considered as its timely election for mandatory carriage for the must

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<sup>15</sup> *Id.* at 2. *See* 47 C.F.R. § 76.55(d).

<sup>16</sup> Opposition at 2-3.

<sup>17</sup> 47 C.F.R. §§ 76.5(pp) and 76.1708.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> Reply at 1.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 1-2, 4; *see* 47 C.F.R. § 76.1607.

<sup>24</sup> Reply at 2.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

carry cycle beginning on January 1, 2003 and expiring on December 31, 2006.<sup>28</sup> Thus, according to WDYR, the instant complaint is timely and ripe for consideration for either the must carry cycle that ended December 31, 2002, or the one that commenced on January 1, 2003.<sup>29</sup>

6. We deny WDYR's complaint. The Commission will accept must carry complaints filed pursuant to Section 76.61(a) if they are filed within 60 days after the denial of carriage by a cable operator, or its failure to respond in writing within 30 days of a station's request for mandatory carriage. We find that WDYR's November 28, 2001 letter made a clear and unequivocal demand for mandatory carriage of the Station's signal on Charter's headend serving Newbern, Troy, Trimble, Obion and Union City, Tennessee, thus triggering the 30-day period for Charter either to commence carrying WDYR or provide a written response denying carriage. Charter's failure to respond by the end of the 30-day period triggered the 60-day deadline for WDYR to file a must carry complaint with the Commission. WDYR, however, waited until several months later to file the instant complaint, alleging that it waited until August 9, 2002 to file its must carry complaint because of confusion as to which communities were the subject of its mandatory carriage demand. The record does not support these allegations. Instead, the record shows that Charter, as well as WDYR, clearly understood which cable communities were the subject of WDYR's November 28, 2001 must carry demand. In fact, on February 4, 2002, albeit a late response to the November 28, 2001 letter, Charter wrote, in pertinent part:

I have received a copy of your letter dated November 28, 2001 ... in which you requested information concerning the elimination of headends serving the communities in Newbern, Troy, Trimble, Obion, and Union City, TN ... The Jackson, TN headend now serves the communities in western Tennessee formerly served by the eliminated headends ... Your November 28, 2001 [letter] also included a must carry demand for WDYR-LP in the communities formerly served by the eliminated headends ... It is Charter's position that carriage of WDYR-LP in the communities formerly served by the eliminated headends is not warranted ...

This letter clearly shows that Charter understood that WDYR was demanding mandatory carriage in the communities of Newbern, Troy, Trimble, Obion and Union City, Tennessee. That is why Charter unambiguously responded and informed WDYR that the headends that had previously served the cable communities in question had been collapsed and replaced with its Jackson, Tennessee headend, which now serves as the principal headend for must carry purposes in those communities. The Commission has stated that a cable operator may change its choice of principal headend only for good cause.<sup>30</sup> Charter maintains that the collapsing of several headends, and the Jackson designation is for legitimate business and engineering purposes. There is nothing in the record that would lead us to conclude that Charter's designation of Jackson, Tennessee as its principal headend was made to avoid its mandatory carriage responsibilities. We find that WDYR's August 9, 2002 complaint was untimely filed and must be denied. The only question remaining is whether or not Charter complied with the notice requirements of Section 76.1607 of the Commission's rules, which requires a 60-day notice to stations carried on a headend before any change in the designation of a cable system's principal headend. The record indicates that WDYR was carried on the Troy and Newbern systems and therefore should have received notice of the headend designation. Charter has not responded to this allegation, consequently, we are requiring it to inform the Commission about the circumstances surrounding its apparent failure to comply with this rule.

7. We believe it appropriate to address one of the central issues in this proceeding even

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Issues*, 8 FCC Rcd 2965, 2968.

though we deny WDYR's complaint as untimely because there is a possibility that the matter may again be presented for our consideration. That issue is whether WDYR is a "qualified" LPTV station for must carry purposes. 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>31</sup> In that regard, the record shows that WDYR does not meet all of the requirements established in those sections. Specifically, the distance between WDYR's city of license and Charter's principal headend in Jackson, Tennessee exceeds the 35-mile statutory limit established in Section 614(h)(2)(D) of the Communications Act.<sup>32</sup> Because of our decision herein, we need not address the other issues raised in the record.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the complaint filed by Tri-State Christian TV, Inc. **IS DENIED** pursuant to Section 614(h) of the Communications Act, as amended, 47 U.S.C. § 534(h).

9. **IT IS FURTHER ORDERED** that Charter Communications submit to the Commission an explanation within 30 days from the release of this *Order* of its apparent failure to provide WDYR-LP with notice prior to the designation of Jackson, Tennessee as its principal headend as required by Section 76.1607 of the Commission's rules.

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>33</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>31</sup> *Id.* at 2981.

<sup>32</sup> *See* 47 U.S.C. § 534(h)(2)(D).

<sup>33</sup> 47 C.F.R. § 0.283.