

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

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

ORDER ON RECONSIDERATION

Adopted: May 4, 2004

Released: May 6, 2004

By the Deputy Chief, 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"). In the Bureau Order¹ addressing the complaint, we granted WMTY's complaint, but authorized Alabama Cable to conduct further signal quality tests if it believed that WMTY did not provide an adequate television signal to its headend. Alabama Cable conducted these tests, and requested reconsideration of the Bureau Order. As explained below, we deny Alabama Cable's request, and direct the parties to conduct joint signal strength tests.

II. BACKGROUND

2. Under the Communications Act of 1934, as amended,² and the Commission's rules³ cable television systems are required to carry "qualified" low power television ("LPTV") stations in certain limited circumstances. One requirement to be a qualified station is that the television station deliver a good quality over-the-air signal to the principal headend of the cable system. Cable operators have the burden of establishing that a television station is not entitled to carriage. The Bureau Order indicated that if a cable operator claimed that a station failed to deliver a signal of adequate strength, this allegation must be supported by signal strength tests that comply with good engineering practices. In opposing WMTY's complaint, Alabama Cable submitted signal strength tests which it stated proved that WMTY failed to provide an adequate signal. The Bureau Order concluded that these tests did not comply with good engineering practices.⁴

¹WMTY, Inc. v. West Alabama TV Cable Co., Inc., 18 FCC Rcd 16550 (2003) ("Bureau Order").

²47 U.S.C. §534(c)(1) and (h)(2).

³47 C.F.R. §76.55(d) and 76.56(b)(3).

⁴WMTY, 18 FCC Rcd at 16552.

3. In response to the *Bureau Order*, Alabama Cable submitted a Petition for Reconsideration which included new signal quality tests. WMTY submitted an Opposition to Petition for Reconsideration, and Alabama Cable submitted a Reply to Opposition. WMTY subsequently filed a Motion to Strike Late Filed Reply to which Alabama Cable responded with an Opposition.

III. DISCUSSION

4. Alabama Cable in its Petition for Reconsideration explains that it conducted new signal strength tests that reflect that WMTY does not deliver a good quality signal, and, therefore, does not qualify for mandatory carriage in the cable communities.⁵ WMTY's Opposition objects to these tests because they were conducted without its knowledge. WMTY further states that the reason Alabama Cable refuses to carry it is because of a personal dispute with WMTY. WMTY also provides a statement from a consulting engineer regarding the "predicted signal strength" of its station indicating that it should provide an adequate signal to Alabama Cable. The station requests that we dismiss Alabama Cable's Petition or order Alabama Cable to have a qualified engineer conduct joint tests with WMTY.⁶

5. Alabama Cable's Reply to WMTY's Opposition largely repeats its arguments regarding the validity of its recent signal tests. Alabama Cable also indicates that information provided by WMTY concerning its "predicted signal strength" is not an acceptable criterion for resolving must carry complaints. Alabama Cable also points out the WMTY's signal strength problems could be the result of locating its antenna on a large metallic water tower.⁷ WMTY responded to these comments with a Motion to Strike Late-Filed Reply. WMTY asserts that we should not accept Alabama Cable's Reply because it was filed eight days late without explanation or request to accept the late pleading.⁸ Alabama Cable countered with an Opposition to Motion to Strike Late-Filed Comments. Alabama Cable explains that its Reply was submitted late because of the unavailability of key personnel, and that its Reply should be considered in order to have a complete record in this proceeding. Alabama Cable also states that it recently learned that WMTY was constructing a new antenna tower around the water tank, and that this suggests that WMTY knows that it does not deliver a good quality signal to the cable system.⁹

6. Because of the unique circumstances involved in this proceeding, which are discussed below, we direct the parties to cooperate and conduct joint signal strength tests to resolve whether WMTY provides an adequate strength television signal to Alabama Cable.¹⁰ We note that WMTY had been carried by Alabama Cable for a number of years before the cable operator dropped the station.¹¹ We further note the short mileage separation between WMTY and Alabama Cable's headend.¹² The issue, moreover, has been raised that there may be problems with WMTY's antenna which it is attempting to correct.¹³ WMTY also claims that it conducted joint signal tests with Alabama Cable on March 7, 2003,

⁵Petition for Reconsideration at 2-3, and Exhibits A, B and C.

⁶Opposition to Petition for Reconsideration at 1-5, and Exhibit I.

⁷Reply to Opposition at 2-5.

⁸Motion to Strike Late-Filed Reply at 1-2.

⁹Opposition to Motion to Strike Late-Filed Comments at 2-4, and nn.6 and 10.

¹⁰The Commission has indicated that it expects full cooperation between cable television operators and television stations in conducting signal strength tests necessary to resolve must carry disputes. *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues Report and Order*, 8 FCC Rcd 2965, 2991 (1993).

¹¹WMTY, 18 FCC Rcd at 16551.

¹²We estimated that the cable headend is about 12.5 miles from WMTY. WMTY, 18 FCC Rcd at 16552.

¹³Reply to Opposition at n.7, and Opposition to Motion to Strike Late-Filed Reply at nn.6 and 10.

which demonstrated that it provided an adequate signal to the cable system.¹⁴ In addition, the signal strength measurements made by Alabama Cable fall only slightly below the threshold requirement for mandatory carriage, and vary significantly from WMTY's calculated predicted signal strength. Finally, Alabama Cable's most recent signal quality tests do not provide necessary information concerning the antenna to help us evaluate the tests, such as antenna type (yagi, dish, dipole, etc.), gain (in dB), orientation (such as 300 degrees NW), and height on tower (where antenna is located on tower).

7. We expect the joint tests to include detailed information regarding the equipment used, its configuration, specifications and operating parameters where applicable. This includes, but is not limited to the weather; the antenna type, center frequency and bandwidth, gain, placement (location on tower), and orientation; whether there are other antennas near this antenna; the cable type, loss (in dB for each segment), length, connections, and whether there are devices (active or passive) on the cable such as splitters or amplifiers and their respective loss; and the signal processor type, model, calibration, and applicable output. Diagrams should be provided where appropriate.¹⁵ Further, we expect both parties to cooperate, follow good engineering practices and comment on or resolve issues that may arise during joint tests. One possible issue concerns whether WMTY is operating within the parameters authorized by its license, especially with regard to its antenna and any alterations it may be making to its antenna.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the Petition for Reconsideration filed by West Alabama TV Cable Co., Inc. **IS DENIED**.

9. **IT IS FURTHER ORDERED** that West Alabama TV Cable Co., Inc. and WMTY, Inc. shall conduct joint signal strength tests to resolve the issue regarding whether WMTY provides an adequate strength television signal to Alabama Cable. These tests shall be conducted as directed above within thirty (30) days of the release of this order. The parties are directed to submit a copy of the test results to the Commission's Media Bureau. The parties may also submit comments regarding the tests.

10. **IT IS FURTHER ORDERED** that West Alabama TV Cable Co. Inc. shall commence carriage of W46DF in the cable communities within ninety days after the release date of this order if joint tests demonstrate that W46DF provides 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.

11. 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

William H. Johnson
Deputy Chief
Media Bureau

¹⁴WMTY, 18 FCC Rcd at 16551.

¹⁵See 47 C.F.R. §76.61(a)(2).