

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

In the Matter of:
Christian Television Network, Inc.
v.
Tele-Media Company of Southwest Kentucky
Tele-Media of Franklin
Request for Mandatory Carriage of
Television Station WHTN-TV,
Murfreesboro, Tennessee
CSR-6095-M

ORDER ON RECONSIDERATION

Adopted: May 27, 2004

Released: June 2, 2004

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Christian Television Network, Inc. ("Christian TV"), licensee of television broadcast station WHTN-TV, Murfreesboro, Tennessee ("WHTN" or the "Station") filed the above-captioned must carry complaint against Tele-Media Company of Southwest Kentucky and Tele-Media of Franklin ("Tele-Media"), for failing to carry WHTN on its cable television systems serving the Nashville, Tennessee DMA, specifically Adairville, Allen County, Auburn, incorporated Franklin, unincorporated Franklin, Lewisburg, incorporated Russellville, unincorporated Russellville, and Scottsville, Kentucky. In the Bureau Order<sup>1</sup> addressing the complaint, we granted WHTN's complaint and directed Tele-Media to commence carriage of WHTN on its Russellville and Adairville cable systems because signal strength tests conducted at Russellville did not comply with good engineering practices, and no tests were provided for Adairville. Tele-Media requested reconsideration of the Bureau Order. As explained below, we grant Tele-Media's Petition for Reconsideration.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended,<sup>2</sup> and implementing rules,<sup>3</sup> commercial television broadcast stations, such as WHTN, are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its

<sup>1</sup>Christian Television Network, Inc. v. Tele-Media Company of Southwest Kentucky, 18 FCC Rcd 10653 (2003) ("Bureau Order").

<sup>2</sup>47 U.S.C. §534.

<sup>3</sup>47 C.F.R. §76.55 – 76.61.

“designated market area,” or DMA, as defined by Nielsen Media Research.<sup>4</sup> The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. A commercial television station asserting must carry rights is required to deliver a good quality signal to the principal headend of a cable system. Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system’s headend, the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system’s headend is -45dBm.<sup>5</sup>

3. In response to the *Bureau Order*, Tele-Media submitted a Petition for Reconsideration and a Request for Stay of Order. Christian TV filed an Opposition to Petition for Reconsideration, and Tele-Media submitted a Reply. Christian TV subsequently filed a Motion for Leave to File and Response to Tele-Media Reply, and Tele-Media submitted a Response.

### III. DISCUSSION

4. Tele-Media in its Petition for Reconsideration repeats its argument discussed in the *Bureau Order*<sup>6</sup> that Christian TV failed to provide notification that it was seeking carriage on the cable system located at Adairville, and because of this, it did not conduct signal strength tests at this location. However, as part of its Petition for Reconsideration, Tele-Media includes signal strength tests conducted at Adairville, which it states demonstrate that WHTN fails to provide an adequate signal to the cable system’s principal headend.<sup>7</sup> Regarding the cable system located at Russellville, Tele-Media explains that it conducted new signal strength tests that prove WHTN does not deliver a signal of adequate strength.<sup>8</sup> Tele-Media further states that the *Bureau Order* should have allowed it a reasonable opportunity to conduct new tests and to resubmit the results to the Commission.<sup>9</sup> Finally, Tele-Media argues that the *Bureau Order* should have conditioned the granting of Christian TV’s complaint on the provision that Tele-Media is only required to carry WHTN within sixty days from the date it provides a good quality signal to the cable headends, which WHTN currently is not doing.<sup>10</sup>

5. In its opposition, Christian TV claims that Tele-Media is not entitled to relief through a Petition for Reconsideration because this Petition is not based on a change in circumstances or facts that were unknown to it, and there are no public interest reasons to justify consideration of the Petition.<sup>11</sup> Christian TV also explains that Tele-Media signal strength tests at Adairville and Russellville fail to comply with good engineering practices.<sup>12</sup>

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<sup>4</sup>47 U.S.C. §534(h)(1)(C); 47 C.F.R. §76.55(e)(2).

<sup>5</sup>47 U.S.C. §534(h)(1)(B)(iii); 47 C.F.R. §76.55(c)(3).

<sup>6</sup>*Christian Television*, 18 FCC Rcd at 10654-6.

<sup>7</sup>Petition for Reconsideration at 2-3, and Exhibit A.

<sup>8</sup>*Id.* at 4, and Exhibit B.

<sup>9</sup>*Id.* at 5.

<sup>10</sup>*Id.* at 5-7.

<sup>11</sup>Opposition at 1-4.

<sup>12</sup>*Id.* at 5-8.

6. Tele-Media states in its Reply that it was proper for it to submit a Petition for Reconsideration because its interests were adversely affected by the *Bureau Order*.<sup>13</sup> Tele-Media further explains that it conducted new tests at Adairville and Russellville to address “the alleged deficiencies identified by Christian TV” in its Opposition, and that these tests “conclusively demonstrate that WHTN’s signal does not even remotely meet the statutory threshold established in the Act for adequate signal strength,” and that “These measurements are in the very same range as each of the earlier tests, proving that any deficiencies in the earlier tests were not material.”<sup>14</sup>

7. Christian TV in its Motion for Leave to File and Response to Tele-Media Reply again claims that it is improper for Tele-Media to submit a Petition for Reconsideration.<sup>15</sup> Regarding Tele-Media’s new tests, Christian TV states that Tele-Media did not provide adequate information. For example, the tests did not provide information concerning the equipment used and the heights on the headend towers to receive similarly situated stations.<sup>16</sup> Christian TV also claims that it is not required to commit to providing an adequate signal by alternative means because it has not been proven that it provides an inadequate signal. Christian TV then states that if the Commission’s Media Bureau concludes “that WHTN’s signal was inadequate, its ordering language on reconsideration could grant carriage conditioned upon WHTN’s written commitment to provide a good signal via alternative means.”<sup>17</sup> Tele-Media in its Response provides the information requested by Christian TV, and explains that “WHTN signal tests were conducted at the same locations, at the same heights and off the same antenna stacks as the systems use to receive other off-air television signals.”<sup>18</sup>

8. We accept Tele-Media’s Petition for Reconsideration. It is in the public interest to accept the additional engineering information to accurately resolve the dispute between the parties.<sup>19</sup> Absent this information, we could not determine whether WHTN provides an adequate signal to Tele-Media’s principal headends. A review of the signal strength tests submitted by Tele-Media in its Reply reflects that discrepancies indicated in the *Bureau Order* have been resolved and the signal tests comply with good engineering practices. As a result, we find that Tele-Media has met its burden and has presented valid evidence that WHTN does not presently provide a good quality signal to Tele-Media’s principal headends serving the Russellville and Adairville cable systems. We therefore grant Tele-Media’s Petition for Reconsideration, and find that WHTN does not currently qualify for mandatory carriage on Tele-Media’s cable systems serving these cable communities.<sup>20</sup> However, if WHTN is able to provide a good quality signal to Tele-Media’s cable system using, for example, specialized antennas furnished by

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<sup>13</sup>Reply at 1-2.

<sup>14</sup>*Id.* at 3-4.

<sup>15</sup>Motion for Leave to File and Response to Tele-Media Reply at 1-2.

<sup>16</sup>*Id.* at 2-4.

<sup>17</sup>*Id.* at 4-5.

<sup>18</sup>Response at 2 and Declaration.

<sup>19</sup>47 C.F.R. §1.106(b)(1) and (c)(2). *See also, e.g., LeSEA Broadcasting Corp. v. Cox Communications Kansas*, DA04-941 (MB rel. April 5, 2004).

<sup>20</sup>Tele-Media also filed a Request for Stay of Order. In view of our action herein, we need not address the issues raised in this Request.

Christian TV, WHTN would have the right to be carried by Tele-Media's Russellville and Adairville cable systems within 60 days.<sup>21</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended,<sup>22</sup> that the Petition for Reconsideration filed by Tele-Media **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the *Bureau Order*, DA03-1780, **IS VACATED** to the extent indicated herein.<sup>23</sup>

11. **IT IS FURTHER ORDERED** that if WHTN provides in the future a good quality signal to the principal headend of Tele-Media's cable system in Russellville or Adairville, Kentucky, Tele-Media shall commence carriage of WHTN on that cable system within 60 days.

12. This action is taken under authority delegated by Section 0.283 and 1.106 of the Commission's rules.<sup>24</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief  
Media Bureau

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<sup>21</sup>The Commission has directed that it expects full cooperation between cable television operators and television stations in resolving 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).

<sup>22</sup>47 U.S.C. §534.

<sup>23</sup>47 C.F.R. §1.106(k)(1)(i).

<sup>24</sup>47 C.F.R. §§0.283 and 1.106.