

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

In the Matter of:	)	
	)	
Franklin Media, Inc.	)	
	)	CSR-6380-M
v.	)	
	)	
Comcast Cable Communications, Inc.	)	
	)	
Request for Mandatory Carriage of	)	
Television Station WPAN-TV,	)	
Walton Beach, Florida	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 14, 2004**

**Released: December 16, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Franklin Media, Inc. (“Franklin”), licensee of television broadcast station WPAN-TV, Walton Beach, Florida (“WPAN” or the “Station”) filed the above-captioned must carry complaint against Comcast Cable Communications, Inc. (“Comcast”), for failing to carry WPAN on its cable television system serving Mobile, Alabama in the Pensacola/Mobile DMA. Comcast filed an opposition to which Franklin replied. For the reasons indicated below, the must carry complaint filed by Franklin is granted.

**II. BACKGROUND**

2. Under Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“*Must Carry Order*”), commercial television broadcast stations, such as WPAN, are entitled to assert mandatory carriage rights on cable systems located within the station’s market.<sup>1</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>2</sup> The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

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<sup>1</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>2</sup> Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission’s rules requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e).

3. Section 614 of the Communications Act and the Commission's rules also provide that 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 principal 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>3</sup>

4. With regard to channel positioning rights, Section 614(b)(6) of the Communications Act and Section 76.57 of the Commission's rules provide commercial television stations electing must carry status with three channel positioning options. A station may elect to be carried on: (1) the channel number on which the station is broadcast over the air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992. The Communications Act and the Commission's rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.<sup>4</sup>

### III. DISCUSSION

5. Franklin explains in its complaint that "it is entitled to carriage on all cable systems within the DMA" and that it sent a letter to "Comcast asking for carriage on the Comcast systems within the DMA."<sup>5</sup> Comcast provided a copy of this letter. This letter states that it is a "Request for Must Carry Status on Comcast Cable in Mobile, Alabama." Further, Franklin states in its letter that "We are prepared at no cost to you to provide you a qualified signal via fiber optic.... The only need we have is a place to rack our equipment which is approximately the dimensions of microwave of fiber optic receivers."<sup>6</sup> Franklin also provided a copy of Comcast's letter responding to this request. Comcast indicates in its reply that Franklin's station, WPAN, is not entitled to must-carry status on its cable system because it does not deliver a good quality signal to its Mobile, Alabama headend.<sup>7</sup> Franklin states in its complaint that after it received this letter, it communicated with Comcast to explain again that it was willing "to provide, at [Franklin's]... expense. A fiber optic signal... to overcome any perceived signal strength" problems, and Comcast verbally responded that it "still refused to provide the required carriage."<sup>8</sup>

6. In its opposition, Comcast explains that WPAN does not deliver a signal of sufficient strength to the principal headend of its Mobile, Alabama cable system. Comcast, therefore, indicates it is under no legal obligation to carry WPAN.<sup>9</sup> In support of this position, Comcast attached signal strength tests.<sup>10</sup> Comcast also states that although Franklin's complaint appeared to request carriage on all of Comcast's cable systems in the Pensacola/Mobile DMA, the letter it sent to Comcast, which was attached to its complaint, only requested carriage on Comcast's Mobile system. Comcast further explains that Franklin

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

<sup>4</sup> 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57.

<sup>5</sup> Complaint at 2.

<sup>6</sup> *Id.* at Attachment A.

<sup>7</sup> *Id.* at Attachment B.

<sup>8</sup> *Id.* at 2.

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

<sup>10</sup> *Id.* at Exhibit 1.

has not provided written notification to Comcast, as required by the Commission, of its failure to meet its must carry obligations concerning WPAN on any other Comcast cable system in the DMA.<sup>11</sup>

7. Franklin in its reply, states “Without conceding the accuracy of the signal strength readings presented in the Opposition, WPAN has offered to, and will, at its own expense, deliver a good quality signal to Comcast through fiber optics. However, Comcast has not agreed to permit WPAN to install the necessary equipment to fulfill this requirement. Thus, failure to provide an over-the-air signal is not an issue.” Franklin further states that the Commission requires a cable system to carry a television station if it provides a good quality signal by alternative means.<sup>12</sup>

8. Franklin does not dispute Comcast’s claim that Franklin’s complaint only presents a valid claim for carriage on Comcast’s Mobile, Alabama cable system. With regard to this system, Comcast presented signal strength tests which it claims proved that WPAN did not deliver an adequate strength over-the-air signal. Franklin, however, has argued that its possible failure to deliver an adequate over-the-air signal should not be an issue because it has offered to deliver, at its own expense, a good quality signal by fiber optics to the principal headend of Comcast’s cable system serving Mobile. We will, therefore, grant Franklin’s complaint that Comcast carry WPAN on its Mobile cable system when Franklin delivers a good quality signal to the system’s principal headend, and that this may be accomplished by alternative means such as by fiber optics.<sup>13</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(d)(3), that the must carry complaint filed by Franklin Media, Inc. (CSR-6380-M) licensee of television broadcast station WPAN, Walton Beach, Florida against Comcast Cable Communications, Inc. **IS GRANTED**. Comcast Cable Communications, Inc. **IS ORDERED** to commence carriage of WPAN-TV on its cable system serving Mobile, Alabama sixty (60) days from the date on which WPAN-TV delivers a good quality signal to the cable system’s principal headend.

10. **IT IS FURTHER ORDERED** that WPAN shall be carried on the channel of the cable system as specified by section 76.57(a) and (d) of the Commission’s rules, 47 C.F.R. § 76.57(a) and (d).

11. This action is taken under authority delegated by Section 0.283 of the Commission’s rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division  
Media Bureau

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<sup>11</sup> *Id.* at 1 n.1.

<sup>12</sup> Opposition at 1-2.

<sup>13</sup> 47 C.F.R. § 76.55(c)(3); *see also Matter of Educational Public TV Corporation v. RCN-BecoCom*, 19 FCC Rcd 16280, 16283-4 (2004).