

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

In the Matter of:)	
)	
Frances S. Smith d/b/a NCN Cable Advertising)	CSR-6966-M
)	
v.)	
Cable One, Inc.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 22, 2006

Released: May 30, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Frances S. Smith d/b/a NCN Cable Advertising, licensee of low power television station WKFK-LP, Pascagoula, Mississippi (“WKFK-LP”), filed the above-captioned complaint against Cable One, Inc. (“Cable One”), for its failure to carry WKFK-LP on its cable systems serving Vancleave and Ocean Springs, Mississippi. No opposition to this complaint has been received. For the reasons discussed below, we grant the complaint.

II. DISCUSSION

2. Both the Communications Act of 1934, as amended, and the Commission’s rules require the carriage of “qualified” low power television (“LPTV”) stations in certain limited circumstances.¹ 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) it 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 (“MSAs”) on June 30, 1990, and the population of such community of

¹47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.²

3. In support of its complaint, WKFK-LP states that, by letter dated September 12, 2005, it elected must carry status on Cable One's system on Channel 7 for the election cycle beginning January 1, 2006.³ WKFK-LP states that Cable One's October 20, 2005 response characterized NCN's must carry election letter as "demanding carriage" and denied WKFK-LP carriage on its Vancleave and Ocean Springs cable system.⁴ WKFK-LP argues that Cable One based its refusal solely on the Media Bureau's decision in *Frances S. Smith d/b/a NCN Cable Advertising v. Cable One, Inc.*, which denied WKFK-LP's must carry complaint with respect to the communities of Vancleave and Ocean Springs.⁵

4. WKFK-LP argues that Cable One's Ocean Springs and Vancleave cable system currently has over 100 activated channels, but carries only 3 local channels and no low power or Class A stations.⁶ WKFK-LP maintains that it meets all the requirements of a qualified low power television station for must carry purposes: 1) it broadcasts 24 hours a day, seven days a week; 2) it complies with interference regulations consistent with its secondary status; 3) its transmitting facilities in Vancleave are within 35 miles of Cable One's principal headend and provide a good quality over-the-air signal to that headend; 4) its community of license, Pascagoula, is ranked as the 243rd MSA as of June 30, 1990 and is well outside of the top 160 MSAs; 5) Cable One's franchise areas in Vancleave and Ocean Springs are located in Jackson County, which is located within the 1990 Pascagoula MSA; and 6) there are no full power stations licensed to Pascagoula or Jackson County, Mississippi.⁷ WKFK-LP argues further that it also provides programming that meets the informational needs of the local residents.⁸ WKFK-LP states that it provides substantial local coverage of news and events throughout southern Jackson County, provides a local one-half hour newscast three times a day, Monday thru Friday, and airs locally-produced programs.⁹ Finally, WKFK-LP states that it meets all obligations and requirements applicable to full power television broadcast stations under Part 73 with respect to the broadcast of non-entertainment programming, programming and rates involving political candidates, election issues, controversial issues of public importance, editorials and personal attacks, programming for children, and equal employment opportunity. WKFK-LP therefore requests that the Bureau order Cable One to commence carriage of its signal in the subject communities.

5. We agree with WKFK-LP and will grant its complaint. We find that the representations made by WKFK-LP demonstrate that it is an eligible low power television station qualified for carriage on Cable One's system. Under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market as a cable operator is not

²47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

³Complaint at Exhibit A.

⁴*Id.* at Exhibit B.

⁵*Id.* at 2, citing 18 FCC Rcd 9970 (2003) ("*NCN Decision*").

⁶*Id.* at 2 n.4.

⁷*Id.* at 3-4.

⁸*Id.* at 4.

⁹*Id.* at 4-6.

entitled to carriage.¹⁰ Cable One has not opposed this request, nor provided any information to support its denial of carriage other than its reference to the *NCN Decision*. It should be noted, however, that the deficiencies with regard to Vanleave and Ocean Springs noted by the Bureau in the *NCN Decision* which involved a carriage request made during the previous election cycle have been corrected in the instant petition. Thus, our *NCN Decision* serves as no bar to the grant of carriage rights to WKFK-LP during the current election cycle.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition filed by Frances S. Smith d/b/a NCN Cable Advertising **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534. Cable One, Inc **IS ORDERED** to commence carriage of WKFK-LP on its Vanleave and Ocean Springs cable system sixty (60) days from the date on which WKFK-LP delivers a good quality signal to the cable system's principal headend.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹⁰See *Must Carry Order*, 8 FCC Rcd at 2990.

¹¹47 C.F.R. § 0.283.