

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

In the Matter of:)
Billy Ray Washington)
v.) CSR-6985-M
MediaCom USA)
Request for carriage of Station W62DE)
Tifton, Georgia)

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2006

Released: May 25, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Billy Ray Washington ("Washington"), licensee of low power television station ("LPTV") W62DE ("W62DE" or the "Station"), Tifton, Georgia, filed a complaint asserting mandatory carriage rights for W62DE on MediaCom USA's cable system serving the community of Tifton, Georgia.1 Mediacom Communications Corp. ("Mediacom") filed an opposition to the complaint. For the reasons discussed below, we deny the complaint.

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.2 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 by 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 Complaint at 1. Petitioner refers to the cable operator as "MediaCom." We will use "Mediacom."

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.³

III. DISCUSSION

3. W62DE states that it requested mandatory carriage on Mediacom's cable system serving Tifton, Georgia in a letter dated October 17, 2005.⁴ W62DE states that Mediacom failed to respond to its mandatory carriage request.⁵ W62DE maintains that this complaint is timely filed within 60 days of November 16, 2005, the date by which Mediacom was required to respond to W62DE's October 17, 2005 letter.⁶ W62DE asserts that it is eligible for carriage on Mediacom's cable system because it meets each of the requirements of Section 76.65(d) of the Commission's rules.⁷ Specifically, W62DE asserts that it broadcasts 24 hours per day, 7 days a week.⁸ It also contends that it is within 35 miles of the cable system's principal headend and that it delivers a good quality signal to that headend as recently verified by Mediacom's local manager in Tifton.⁹ W62DE also states that its community of license and the cable community in question are not included in the list of the top-400 Metropolitan Statistical Areas in 1990.¹⁰ Finally, W62DE asserts that Mediacom failed to demonstrate that W62DE is not eligible for mandatory carriage as evidenced by its failure to respond to W62DE's October 17, 2005 request.¹¹

4. In opposition, Mediacom asserts that despite W62DE's claims to the contrary, the Station is not a qualified LPTV station for must carry purposes for two reasons.¹² First, because it fails to deliver a good quality signal to Mediacom's Fitzgerald, Georgia headend, which serves Tifton, Georgia, and second, because W62DE failed to either properly notify Mediacom of its alleged mandatory carriage obligations or to properly serve Mediacom with a copy of the instant complaint, as required by the Commission's rules.¹³ Mediacom states that it conducted two separate signal strength studies which showed measurements below the -45 dBm threshold level required by the Commission's rules.¹⁴ According to Mediacom, a test conducted on February 16, 2006 resulted in the following readings: 1:45 p.m. -85.45 dBm; 2:15 p.m. -82.95 dBm; 2:45 p.m. -83.15 dBm; and 3:15 p.m. -83.45 dBm. A second test conducted on February 21, 2006 resulted in the following readings: 6:00 p.m. -83.75 dBm; 6:30 p.m. -83.85 dBm; 7:00 p.m. -83.35 dBm; and 7:30 p.m. -83.45 dBm.¹⁵ Mediacom asserts that W62DE failed to comply with the Section 76.61(a) notification requirements and the Section 76.7(a)(3) service procedures.¹⁶ It points out that W62DE mailed its October 17, 2005 letter, as well as a copy of its must carry complaint, to a mystery address in New York City, New York, to an entity called "Mediacom USA," which is not affiliated with Mediacom Communications Corp., whose headquarters is located in

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

⁴ Complaint at 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 1-3 and Exhibits 1 and 2.

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² Opposition at 3.

¹³ *Id.*

¹⁴ *Id.* at 3-4.

¹⁵ *Id.* at Exhibit A.

¹⁶ *Id.* at 2.

Middletown, New York.¹⁷ Mediacom also points out that its registered agent is located in Atlanta, Georgia.¹⁸ Mediacom therefore maintains that W52DE is not a “qualified” LPTV for mandatory carriage purposes and states that the Commission should dismiss or deny W62DE’s complaint.¹⁹

5. Staff review of the signal strength tests results submitted by Mediacom show that the testing followed good engineering practices and establishes that W62DE does not deliver a good quality over-the-air signal to the Mediacom Fitzgerald, Georgia headend.²⁰ The results noted above show readings ranging between -82.95 dBm and -83.85 dBm, which are substantially below the signal levels established by the Commission’s rules of -45 dBm for UHF signals and -49 dBm for VHF signals. In that regard, 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.²¹ One of those requirements is that the LPTV station provide a good quality over-the-air signal to a cable operator’s principal headend.²² Because of our finding that W62DE is not a qualified LPTV station for must carry purposes; we need not address the procedural issues raised by Mediacom in this proceeding. In view of the above, we deny W62DE’s must carry complaint.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the complaint filed by Billy Ray Washington **IS DENIED** pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission’s rules.²³

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 4.

²⁰ W62DE has not introduced any evidence to the support its assertion that its ability to deliver a good quality signal to Mediacom’s headend was recently verified by Mediacom’s local manager in Tifton, Georgia.

²¹ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2981 (1993).

²² See 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

²³ 47 C.F.R. § 0.283.