

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

In the Matter of:
Maranatha Broadcasting Company
v.
Armstrong Utilities, Inc.
Request for Mandatory Carriage of
Television Station WFMZ-TV,
Allentown, Pennsylvania
CSR-6993-M

MEMORANDUM OPINION AND ORDER

Adopted: June 29, 2006

Released: July 3, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Maranatha Broadcasting Company, licensee of television broadcast station WFMZ-TV, channel 69, Allentown, Pennsylvania ("WFMZ" or the "Station") filed the above-captioned must carry complaint against Armstrong Utilities, Inc. ("Armstrong"), for failing to carry WFMZ on its cable television systems serving Oxford and nearby communities in southeast Pennsylvania (the "cable communities").

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 WFMZ are entitled to assert mandatory carriage rights on cable systems located within the station's market.

1 WFMZ lists the following cities and areas (cable communities) as served by Armstrong's cable television system: Oxford (location of cable headend), East Nottingham, Lower Oxford, Upper Nottingham, Londonderry, Highland, West Fallowfield, Elf, Upper Oxford and unincorporated areas of Chester County, Pennsylvania. Complaint at 1.

2 8 FCC Rcd 2965, 2976-2977 (1993).

3 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)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area as determined by Nielsen Media Research. 47 C.F.R. § 76.55(e)(2).

each television market exclusive of others, based on measured viewing patterns.

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>4</sup>

### III. DISCUSSION

4. In support of its complaint, WFMZ explains that it is a full-power commercial television station licensed to Allentown, Pennsylvania, and that it is in the same television market, namely, the Philadelphia DMA, as the cable communities served by Armstrong's cable system.<sup>5</sup> WFMZ further explains that on October 1, 2005, it wrote Armstrong requesting carriage on Armstrong's cable system as authorized by the Commission's must carry rules.<sup>6</sup> WFMZ indicates that Armstrong replied by letter on October 21, and denied carriage alleging that WFMZ did not provide a good quality signal to its headend.<sup>7</sup> In response, WFMZ explains that it wrote Armstrong on December 6 that it was offering to install at its own expense "a custom-cut receiving antenna, pre-amplification equipment and associated coaxial cable in order to deliver a good quality signal" to the headend of Armstrong's cable system. In its letter, WFMZ stated that this equipment had rectified signal delivery problems at other cable systems.<sup>8</sup> WFMZ indicates that this offer and its claim to must carry status were rejected by Armstrong in a letter dated December 15 because, according to Armstrong, this equipment still would not provide an adequate signal.<sup>9</sup> WFMZ states in its complaint that it believes it delivers a good quality signal to Armstrong's cable headend, and "[e]ven if, arguendo," it does not, it is still entitled to carriage under the Commission's must carry rules because it "has promised to supply and install, at its expense, all the equipment necessary for delivery of a good quality signal."<sup>10</sup>

5. Armstrong in its opposition agrees that it exchanged several letters with WFMZ, and that it denied WFMZ carriage on its cable system because it did not provide a good quality signal to its headend.<sup>11</sup> In its October 21, 2005, letter, Armstrong explains it provided test results to WFMZ that indicated a poor quality signal.<sup>12</sup> When WFMZ then proposed to provide specific equipment to address any signal strength deficiency, Armstrong explains that it replied that it had analyzed this proposal and that it would not have resolve WFMZ's signal quality problems.<sup>13</sup> Armstrong objects to WFMZ's

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<sup>4</sup> 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

<sup>5</sup> Complaint at 3-4.

<sup>6</sup> *Id.* at 2, *citing* 47 C.F.R § 76.61(a), and Attachment A.

<sup>7</sup> *Id.* at 2, and Attachment B, *citing* 47 C.F.R. § 76.55(c)(3).

<sup>8</sup> *Id.* at 2, and Attachment C.

<sup>9</sup> *Id.* at 2, and Attachment D.

<sup>10</sup> *Id.* at 3-4, *citing* 47 C.F.R. § 76.55(c)(3) and *Upchurch Broadcasting, Inc.*, 10 FCC Rcd 8623 (CSB 1995).

<sup>11</sup> Opposition at 3-5, and Exhibits 3-8.

<sup>12</sup> *Id.* at 3-4, and Exhibit 4.

<sup>13</sup> *Id.* at 5, 8-9, and Exhibit 7.

statement in its complaint that it would supply and install all necessary equipment to deliver a good quality signal because in the exchange of letters between WFMZ and Armstrong, WFMZ only offered to provide specific equipment, which, as indicated above, would not solve its signal strength problems according to Armstrong.<sup>14</sup> Armstrong claims that WFMZ knew or should have known that its cable system was located considerably beyond WFMZ's Grade B contour, and that WFMZ did not deliver a good quality signal to the cable system. Armstrong indicates that WFMZ's claim that it delivered a good signal reflects a lack of candor.<sup>15</sup> Armstrong argues that the Commission should dismiss WFMZ's complaint because it currently does not deliver an adequate signal. Armstrong further argues that "absent extraordinary measures, WFMZ will never deliver a good quality signal" because of the distance, about 62 miles, between its transmitter and the headend of Armstrong's cable system.<sup>16</sup>

6. WFMZ in its reply claims that Armstrong has failed to cooperate to try to resolve the signal quality dispute, and that cooperation is required by the Commission.<sup>17</sup> WFMZ also argues that Armstrong has failed to demonstrate that WFMZ does not deliver a good quality signal to its headend. WFMZ supports this by indicating that there are problems with Armstrong's testing of WFMZ's signal. For example, WFMZ claims that Armstrong has not shown that its test equipment is the same equipment it uses to receive similar signals, and that its test antenna was mounted at same height as other UHF antennas on its headend tower. WFMZ claims, moreover, that Armstrong did not specify the age or condition of the test antenna, and that this antenna is "particularly ill-suited for reception of WFMZ."<sup>18</sup> In addition, WFMZ indicates that some aspects of the antenna or measuring equipment may have been defective.<sup>19</sup> WFMZ also asserts that it has resolved other signal disputes with cable systems by installing equipment at headends, and Armstrong has failed to allow WFMZ the opportunity to prove that the equipment it offered to provide would resolve this dispute.<sup>20</sup>

7. Finally, WFMZ claims that Armstrong's arguments are not relevant, and the critical factor is that it has repeatedly offered to bear the costs of delivering a good quality signal to the headend of Armstrong's cable system. Thus, WFMZ requests that the Commission grant its must carry complaint on the condition that it provides and installs the necessary equipment to deliver a good quality signal to Armstrong's cable headend. WFMZ also requests that the Commission order Armstrong to cooperate with WFMZ.<sup>21</sup>

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<sup>14</sup> *Id.* at 8-10.

<sup>15</sup> *Id.* at 1, 3, and 10-11.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> Reply at 1-3, citing *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1992) ("*Cable Report and Order*"); *Clarification Order*, 8 FCC Rcd 4142 (1993); *CTV of Derry, Inc.*, 11 FCC Rcd 7641 (CSB 1996), *reconsideration denied*, 14 FCC Rcd 6611 (CSB 1999).

<sup>18</sup> *Id.* at 3-4.

<sup>19</sup> *Id.* at 4. WFMZ asserts that in case its signal is inadequate, WFMZ-DT, which simulcasts WFMZ's programming, should provide an adequate signal. *Id.* at n.2.

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> *Id.* at 5-7, citing Section 614(h)(1)(B)(iii) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h)(1)(B)(iii); *Upchurch Broadcasting, Inc.*, 10 FCC Rcd 8623, 8624 (CSB 1995); *Greater Dayton Public Television*, 10 FCC Rcd 1055 (CSB 1995); *Montgomery Cablevision, L.P.*, 10 FCC Rcd 2732 (CSB 1995); *Silver King Broadcasting of Massachusetts, Inc.*, 11 FCC Rcd 4798 (CSB 1996); *CTV of Derry, Inc. (Paragon Cable)*, 13 FCC Rcd 12484, 12487 (CSB 1998).

8. Our review of the signal strength tests submitted by Armstrong in its opposition indicates that the tests comply with good engineering practices, and that WFMZ does not provide a good quality signal to the headend of Armstrong's cable system. With regard to WFMZ's offer to supply specific equipment to correct signal strength problems, it is not clear whether this equipment would result in a good quality signal. Only signal strength tests using this equipment at Armstrong's headend would resolve this issue. WFMZ also offered to supply and install at its own expense all necessary equipment to correct any deficiency in its signal, and to deliver a good signal to Armstrong's headend. The Commission's rules allow commercial television stations to provide, at their own expense, whatever equipment is necessary to ensure delivery of a good quality signal to a cable system's principal headend.<sup>22</sup> Thus, WFMZ is entitled to mandatory carriage on Armstrong's cable system serving the cable communities when WFMZ provides the cable system with a signal of good quality at Armstrong's headend. We instruct the parties to cooperate in this matter.

#### 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 Maranatha Broadcasting Company, licensee of television broadcast station WFMZ, Allentown, Pennsylvania against Armstrong Utilities, Inc. **IS GRANTED**.

10. **IT IS FURTHERED ORDERED**, in accordance with Section 76.61(b)(2) of the Commission's rules, 47 C.F.R. §76.61(b)(2), that Armstrong **SHALL COMMENCE CARRIAGE** of WFMZ's signal on its cable system serving the cable communities within forty-five (45) days from the date that WFMZ provides a good quality signal to Armstrong's headend. WFMZ shall be carried on the channel of the cable system as specified by Section 76.57 of the Commission's rules. 47 C.F.R. § 76.57.

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. Broeckaert  
Deputy Chief, Policy Division  
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<sup>22</sup> 47 C.F.R. § 76.55(c)(3).