

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

In the Matter of:
Sonshine Family Television, Inc.
v.
RCN Telecom Services of Philadelphia, Inc.
Request for Mandatory Carriage of
Television Station KBPH,
Bethlehem, Pennsylvania
CSR-7002-M

MEMORANDUM OPINION AND ORDER

Adopted: July 18, 2006

Released: July 24, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Sonshine Family Television, Inc. ("Sonshine"), licensee of television broadcast station WBPH (Channel 60), Bethlehem, Pennsylvania ("WBPH" or the "Station") filed the above-captioned must carry complaint against RCN Telecom Services of Philadelphia, Inc. ("RCN"), for failing to carry WBPH on its cable systems serving Milbourne Borough, Clifton Heights, Collingsdale, Colwyn, Darby, Darby Twp., East Lansdowne, Eddystone, Folcroft, Glenolden, Lansdowne, Morton, Norwood, Prospect Park, Ridley, Ridley Park, Rutledge, Sharon Hill, Tinicum, Upper Darby Twp., Westminster, Yeadon, and Prospect Park Borough, Pennsylvania (the "cable communities").

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act 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 are entitled to assert mandatory carriage rights on cable systems located within the station's market.

1 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, (continued...)

others, based on measured viewing patterns.

3. Pursuant to 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 is not entitled to carriage.<sup>4</sup> One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>5</sup> Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>6</sup>

### III. DISCUSSION

4. In support of its complaint, WBPH states that it is a full-power television station licensed to Bethlehem, Pennsylvania, which is in the Philadelphia DMA.<sup>7</sup> It states further that RCN operates a cable television system in Lehigh and Northampton counties, also in the Philadelphia DMA.<sup>8</sup> WBPH asserts that on November 30, 2005, it informed RCN of its must carry election and requested carriage on RCN's Philadelphia cable system pursuant to the Section 76.56 of the Commission's rules.<sup>9</sup> WBPH asserts that RCN did not respond in writing to its November 30, 2005 letter requesting mandatory carriage in the cable communities within 30 days of receipt of such request as required by Section 76.61(a)(2) of the Commission's rules.<sup>10</sup> WBPH asserts further that its signal is not substantially duplicated by any local commercial television station in the Philadelphia DMA.<sup>11</sup> WBPH maintains that, if needed, it is willing to provide and install, at its own expense, whatever equipment it needs to provide a -45 dBm or better signal to the headend in question.<sup>12</sup>

5. In opposition, RCN states that contrary to WBPH's statements about the Lehigh and Northampton headend, the cable communities at issue are served by RCN's PHL System principal headend located in Folsom, Pennsylvania (the "Ridley Site").<sup>13</sup> RCN asserts that the Ridley Site is its principal headend because it serves all of the subscribers in the PHL system; it accommodates the signal

---

(...continued from previous page)

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 base on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

<sup>4</sup> *See Must Carry Order*, 8 FCC Rcd at 2990.

<sup>5</sup> 47 C.F.R. § 76.55(c)(3).

<sup>6</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>7</sup> Complaint at 1.

<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> *Id.* and Exhibit 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 3 and Exhibit A.

<sup>13</sup> Opposition at 1-2 and 4, n.10.

processing equipment that takes satellite-delivered programming and programming transported to that site where it is consolidated and processed for transmission, and lies near the center of the service area.<sup>14</sup> RCN asserts that WBPH is not a “qualified” commercial television station entitled to mandatory carriage because it does not deliver a signal of at least -45 dBm to the Ridley Site principal headend.<sup>15</sup> RCN maintains that signal strength testing it conducted on April 14, 2006 at its Ridley Site revealed readings ranging between -90.5 dBm and -88.2 dBm.<sup>16</sup> According to RCN, the tests were conducted using a temporary antenna 20 feet above ground level since permanent “antenna structures are not allowed on this property.”<sup>17</sup> RCN also maintains that testing conducted at its Upper Darby Site – the receiving site - where all of its off-air signals are received, also indicate that the Station’s signal is inadequate, and revealed readings ranging between -74.6 dBm and 73.6 dBm, well below the required -45 dBm threshold.<sup>18</sup>

6. In reply, WBPH asserts that RCN failed to demonstrate that it is not a “qualified” local commercial television station for must carry purposes on the RCN cable system in question.<sup>19</sup> It maintains that RCN’s signal strength testing at both sites is flawed, and states that it is likely that the Station, with a properly tested signal, could provide a good quality signal to RCN’s off-the-air receive site located at the Upper Darby Site.<sup>20</sup> WBPH also asserts that RCN has ignored its obligation to cooperate with the Station to resolve their dispute over WBPH’s signal quality beginning with RCN’s lack of response to the Station’s request for mandatory carriage, never identifying the location of its principal headend, and never describing its test equipment or testing methodology prior to filing its Opposition.<sup>21</sup> WBPH maintains that it would be irrational for RCN to insist that WBPH deliver a -45 dBm or better signal to RCN’s principal headend at its Ridley Site where over the air antennas are not permitted.<sup>22</sup>

7. WBPH asserts that RCN has manipulated the designation of its principal headend to avoid mandatory carriage of the WBPH signal by measuring the Station’s signal with improper equipment that produced invalid tests results and by designating as its principal headend a location where RCN does not receive off-air signals.<sup>23</sup>

8. In a subsequent letter, RCN maintains that it will begin carriage of the WBPH signal if it delivers a good quality signal to either its principal headend at the Ridley Site or its over-the-air receive site at the Upper Darby Site.<sup>24</sup> RCN restates that it uses the Upper Darby Site as a receive location because of certain restrictions at the Ridley Site principal headend.<sup>25</sup> RCN maintains further that it

---

<sup>14</sup> RCN Letter at 8.

<sup>15</sup> Opposition at 4.

<sup>16</sup> *Id.* at 3-4 and Attachment 1.

<sup>17</sup> *Id.*, Attachment 1.

<sup>18</sup> *Id.* at 4 and Attachment 1.1.

<sup>19</sup> Reply at 1-2.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.* at 6-7, n.4.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> RCN Letter at 1-2.

<sup>25</sup> *Id.* at 2, n.2.

remains “fully committed to working with [WBPH] to implement carriage of the Station.”<sup>26</sup>

9. Although RCN has stated that it is willing to carry the WBPH signal to the cable communities once the Station provides a good quality signal, the main issue which must be resolved before going forward is which of the facilities noted is RCN’s principal headend. This is paramount because the Commission’s rules mandate that a television broadcast station must provide a good quality signal to a cable system’s principal headend. Therefore, we must determine where RCN’s principal headend is located. It is from that point that WBPH’s signal must be measured for must carry purposes. The Commission rules give wide discretion for cable operators to choose their principal headend’s location. In this regard, the Commission will allow the system to select its own principal headend, provided that its choice is reasonable and it is not made in order to circumvent the cable operator’s must carry obligations.<sup>27</sup> The Commission has established factors that it considers in judging the reasonableness of a designated principal headend. These factors include, whether the principal headend serves the majority of the subscribers, accommodates the majority of signal processing equipment, and is near the center of the cable system.<sup>28</sup> RCN has designated the Ridley Site as its principal headend. A review of the record reveals that RCN serves all of its subscribers from this facility. In addition, the Ridley Site accommodates the majority of RCN’s signal processing equipment, and is located near the center of the system. Our review of the record reveals that RCN’s Ridley Site meets these requirements.

10. RCN conducted signal strength tests at its Ridley Site using a temporary antenna set at 20 feet. The Commission has established measurement procedures at Section 73.686(b)(2) of its rules.<sup>29</sup> This rule provides that signal strength tests generally should be taken at 30 feet in height.<sup>30</sup> Consequently, we find that RCN did not follow proper Commission procedures in measuring WBPH’s signal strength at the Ridley site and, thus, failed to meet its burden to show that the Station is not entitled to carriage<sup>31</sup>. WBPH, on the other hand, has committed to acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide a good quality signal at RCN’s principal headend. WBPH by committing to provide any necessary equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.<sup>32</sup> Thus, we find that WBPH is entitled to mandatory carriage on the RCN cable system at issue once it has delivered a good quality signal to RCN’s principal headend, the Ridley Site. In addition, we note that RCN has apparently agreed to provide carriage of WBPH by means of an alternative site. We encourage the parties to investigate this solution to their dispute and expect any future tests to be conducted consistent with the Commission’s rules; following generally acceptable engineering practices, including the use of antennas ordinarily used by the cable system to receive UHF signals. Based on the foregoing we conditionally grant WBPH’s complaint.

---

<sup>26</sup> *Id.*

<sup>27</sup> *Must Carry Order*, 8 FCC Rcd at 2968.

<sup>28</sup> *Id.*; see also *San Bernardino Community College District, San Bernardino, California v. Adelphia California Cablevision LLC*, 20 FCC Rcd 18046 (2004).

<sup>29</sup> 47 C.F.R. § 73.686(b)(2); see also *Acadiana Cable Advertising, Inc. v. Telecable Associates, LLC d/b/a Cox Communications*, 18 FCC Rcd 6506 (2003).

<sup>30</sup> *Id.*

<sup>31</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>32</sup> See *Must Carry Order*, 8 FCC Rcd at 2991; see also 47 U.S.C. § 534(h)(1)(B)(iii).

**IV. ORDERING CLAUSES**

11. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by Sonshine Family Television, Inc., licensee of television broadcast station WBPH, Bethlehem, Pennsylvania, against RCN Telecom Services of Philadelphia, Inc. **IS CONDITIONALLY GRANTED**.

12. **IT IS FURTHER ORDERED** that RCN **SHALL COMMENCE CARRIAGE** of the WBPH signal on Channel 60 of its cable system serving Milbourne Borough, Clifton Heights, Collingsdale, Colwyn, Darby, Darby Twp., East Lansdowne, Eddystone, Folcroft, Glenolden, Lansdowne, Morton, Norwood, Prospect Park, Ridley, Ridley Park, Rutledge, Sharon Hill, Tinicum, Upper Darby Twp., Westminster, Yeadon, and Prospect Park Borough, Pennsylvania, within sixty (60) days after WBPH delivers a good quality signal to RCN's principal headend.

13. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>33</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

---

<sup>33</sup> 47 C.F.R. § 0.283.