

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

In the Matter of:)
)
WMTY, Inc.)
) CSR-7003-M
v.)
)
James Cable Partners)
)
Request for Mandatory Carriage)
of Television Station W24DC)
Hamilton, Alabama)

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 2006

Released: August 2, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. WMTY, Inc., licensee of low power television station ("LPTV") W24DC ("W24DC" or the "Station"), Hamilton, Alabama, filed a complaint pursuant to Section 76.7 of the Commission's rules, asserting mandatory carriage rights for W24DC on James Cable Partners d/b/a CommuniComm Services' cable systems ("JCP") serving Guin, Sulligent and Hackleburg, Alabama, and surrounding environs (the "cable communities").¹ JCP filed an opposition to which W24DC replied.

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 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) 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. See 47 C.F.R. § 76.7. In its Opposition, JCP notes that all three cable communities are served by its Sulligent headend.

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. W24DC asserts that it is a “Qualified Low Power Station” because it meets “every factor of a qualified low power station” pursuant to Section 76.55(d) of the Commission’s rules.⁴ It states that it broadcasts 24 hours a day, seven days a week; and meets all obligations and requirements “applicable to full power television stations with respect to the broadcast of nonentertainment programming, programming rates involving political candidates, election issues, controversial issues of public importance, editorials, personal attacks, children’s programming, and equal employment opportunities.”⁵ W24DC asserts that there are no full power television broadcast stations within Marion and Lamar counties where the cable communities are located.⁶ It asserts further that the closest full power television broadcast stations to Hamilton, Alabama, are in Tupelo, Mississippi and Florence, Alabama, 44 and 51 miles away, respectively, and that neither station broadcasts programming focused on the events in these two counties.⁷ W24DC maintains that because of its proximity to the cable systems, it can provide a good quality over-the-air signal to JCP’s Sulligent principal headend.⁸ W24DC asserts that a signal strength test conducted on February 24, 2006 at the Sulligent headend, showed that W24DC delivered a good quality signal.⁹ W24DC points out that during the test its signal was measured at 20 feet because the JCP representative indicated he would not climb “the tower” to measure the Station’s signal.¹⁰ Finally, W24DC asserts that on December 12, 2005 it demanded that JCP commence carriage of its signal on the systems at issue, and that JCP failed to respond to W24DC within 30 days.¹¹

4. In opposition, JCP argues that the Commission should dismiss W24DC’s complaint because the Station is not a “qualified” LPTV for must carry purposes because it does not fully meet the criteria established in Section 76.55(d)(2) of the Commission’s rules.¹² JCP argues that W24DC failed to demonstrate that it provides local news and information to the cable communities not provided by full power television broadcast stations.¹³ JCP argues that the Station’s vague examples of its local programming lack a sufficient degree of specificity.¹⁴ JCP also contends that W24DC failed to provide evidence that it satisfies the Commission’s children’s programming requirements; and that the Station does not deliver the requisite good quality signal to JCP’s principal headend.¹⁵ In support of this allegation, JCP submits a “Declaration” by its System Manager in Alabama, stating that on February 24, 2006, a signal strength test was conducted at JCP’s Sulligent, Alabama headend, using an 8-array UHF

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

⁴ Complaint at 1, 5.

⁵ Complaint at 1-3.

⁶ *Id.* at 3-4.

⁷ *Id.* at 4.

⁸ *Id.* W24DC states that the Station’s transmitter site is 13 miles from the Sulligent headend. *Id.*

⁹ *Id.* at 6, citing 47 C.F.R. § 76.55(d)(4); *Id.* n.7.

¹⁰ *Id.*

¹¹ Complaint at 5.

¹² Opposition at 1-3; *see also* 47 C.F.R. § 76.55(d).

¹³ Opposition at 3-4.

¹⁴ *Id.*

¹⁵ *Id.* at 6-7.

Channel Master antenna set at 20 feet from the ground, and that it revealed a reading of 3.5 dBmV¹⁶

5. In its reply, W24DC asserts that JCP failed to refute that the Station is a “qualified” LPTV for must carry purposes and states that contrary to what JCP contends, it provides “significant local public affairs, informational, and children’s programming” to the cable communities at issue.¹⁷ W24DC contends that JCP failed to introduce any evidence that its claim that the full power television broadcast stations it carries adequately serve the news and informational needs of the residents of the subject cable communities.¹⁸ W24DC maintains that out of 168 weekly hours the Station is on the air, it offers approximately 78.5 hours of local programming.¹⁹ W24DC asserts that it meets the children’s programming requirements in Section 73.671(c) of the Commission’s rules because each week, on Saturday, it broadcasts at least 5 hours of children’s programming.²⁰ W24DC reiterates that it provides a good quality signal to JCP’s principal headend at Sulligent, Alabama.²¹

6. We agree with W24DC that JCP has failed to show that the Station is not a “qualified” LPTV for must carry purposes. Although JCP asserts that the full power television broadcast stations it broadcasts provide some local programming to the cable communities, JCP failed to demonstrate how such programming is in fact “local” and focused on the needs of the residents of the subject cable communities. The information on the record makes it very doubtful that such programming would be at the same “local” level as W24DC’s programming. W24DC, on the other hand, devoted its Reply to explaining how its local programming serves and/or focuses on the geographically-proximate cable communities. Concerning children’s programming, W24DC showed that it receives at least 5 weekly hours of qualifying children’s programming from Faith TV. Thereby, meeting the requirements of Section 73.671(c) of the Commission’s rules.

7. We also find that JCP has failed to show that W24DC does not deliver a good quality signal. In fact, other than unsupported conclusions, JCP has failed to introduce any evidence regarding this issue. In this regard, the Commission has stated: “to the extent that the cable operator is able to do so, the signal level shall be determined based on measurements made with generally accepted equipment that is currently used to receive signals of similar frequency range, type or distance from the principal headend.”²² In the instant case, measurements were neither taken at the tower nor using the same equipment that JCP uses to receive similar signals. Additionally, based on the record, it appears that JCP did not use good engineering practices to measure W24DC’s signal. Cable operators’ signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were conducted.²³

¹⁶ Declaration of Brian D. Chase.

¹⁷ Reply at 1 and 3-10.

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 3-4.

²⁰ *Id.* at 4 and Exhibit IV.

²¹ *Id.* at 10-11.

²² *Must Carry Clarification Order*, 8 FCC Rcd at 4143.

²³ *Id.*

8. In addition, a cable operator must conduct multiple signal quality tests to ensure accurate results.²⁴ Generally, if the initial readings for a UHF station are between -51 dBm and -45 dBm, inclusive, readings must be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results. It is apparent from our review of the record that JCP did not conform to these requirements. The record is devoid of any information that would indicate otherwise. The only information JCP provides is two statements indicating that the reading at Sulligent was measured using an 8-array UHF Channel Master Antenna set at 20 feet from the ground, and that it revealed a reading of 3.5 dBmV, which translates into a -45.25 dBm reading. We expect any future tests to be conducted consistent with the Commission's rules and directives; following generally acceptable engineering practices, including the use of antennas ordinarily used by the cable system to receive UHF signals.

9. Based on the foregoing we grant W24DC's must carry Complaint conditioned upon the station delivering a good quality over-the-air signal to JCP's Sulligent, Alabama headend. We remind the parties that such signal must be without improvements, because, unlike full power commercial television broadcast stations, LPTV stations, such as W24DC, are not allowed by statute or the Commission's rules to cure a signal quality deficiency with additional equipment. JCP will have 20 days from the date of this *Order* to demonstrate that W24DC does not provide a good quality signal to its headend. Evidence supporting this finding shall be submitted to the Commission and served upon W24DC at the conclusion of the testing.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, that the complaint filed by WMTY, Inc. **IS CONDITIONALLY GRANTED** pursuant to Section 614(h) of the Communications Act, as amended, 47 U.S.C. § 534(h).

11. **IT IS FURTHER ORDERED** that James Cable Partners d/b/a CommuniComm Services shall conduct signal strength tests to measure W24DC's signal at the Sulligent headend within 20 days from the date that this *Order* is released; and shall submit to the Commission, within 10 days from the date of completion of the Station's signal strength survey, evidentiary documentation supporting its findings.

12. **IT IS FURTHER ORDERED** that James Cable Partners d/b/a CommuniComm Services **SHALL COMMENCE CARRIAGE** of the W24DC signal on its cable system serving Guin, Sulligent and Hackleburg, Alabama, within 60 days from the date the Station delivers a good quality signal, without improvements, to JCP's Sulligent, Alabama, headend.

13. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

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Media Bureau

²⁴ See *Channel 5 Public Broadcasting, Inc. v. WestStar Cable*, 8 FCC Rcd 4953 (1993).

²⁵ 47 C.F.R. § 0.283.