

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

In the Matter of:
Billy Ray Washington
v.
Mediacom Communications Corp.
Request for Carriage of
Television Station W62DE,
Tifton, Georgia
CSR-6985-M

ORDER ON RECONSIDERATION

Adopted: October 12, 2006

Released: October 17, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. Billy Ray Washington, licensee of low power television station ("LPTV") W62DE ("W62DE" or the "Station") filed a petition for reconsideration of the Media Bureau's Order ("Bureau Order") denying must carry status to W62DE on Mediacom Communications Corp.'s ("Mediacom") cable system serving the community of Tifton, Georgia.1 Mediacom filed an opposition.

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) is located no more than 35 miles from the cable system's headend and delivers to the

1 Billy Ray Washington v. Mediacom USA, 21 FCC Rcd 5949 (2006) ("Washington").

2 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

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 within the county or other political subdivision (of a State) served by the cable system.³

III. DISCUSSION

3. In the initial proceeding, W62DE filed a mandatory carriage complaint against Mediacom for its failure to carry W62DE on its cable system serving Tifton, Georgia.⁴ Mediacom filed an opposition arguing that W62DE's petition should be dismissed for two reasons. First, because the Station cannot deliver a good quality signal to Mediacom's Fitzgerald, Georgia headend, which serves Tifton, Georgia, and second because W62DE failed to properly notify Mediacom of its alleged mandatory carriage obligations or to properly serve Mediacom with a copy of the initial complaint, as required by the Commission's rules. The *Bureau Order* denied W62DE's complaint because the Station failed to deliver a good quality over-the-air signal to Mediacom's Fitzgerald, Georgia headend in accordance with the requirements established in Section 614(h)(2) of the Communications Act and Section 76.55(d) of the Commission's rules.⁵

4. In its reconsideration petition, W62DE seeks to reverse the *Bureau Order*, arguing that Mediacom is carrying two LPTV stations - W05AZ and W38DG, both licensed to Tifton, Georgia – as must carry stations even though they do not provide an “adequate” quality signal to Mediacom's principal headend in Fitzgerald.⁶ W62DE asserts that Mediacom allows the other two LPTV stations to deliver their signal to Mediacom's Tifton, Georgia facilities, and then Mediacom relays the signal via fiber to the Fitzgerald headend.⁷ W62DE argues Mediacom should be required to accord W62DE the same treatment as the other two LPTV stations.⁸

5. In its Opposition, Mediacom argues that W62DE's petition for reconsideration should be denied because the Station does not deliver a good quality over-the-air signal to Mediacom's principal headend as required by the Commission's rules and the Communications Act and as evidenced by the signal test measurements submitted by Mediacom.⁹ Mediacom maintains that it is not required to give W62DE the same treatment it gives W05AZ and W38DG, because a cable television operator has the discretion to voluntarily carry stations, irrespective of their ability to place a good quality signal to a

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

⁴ *Washington*, 21 FCC Rcd 5949 (2006).

⁵ See 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2981 (1993) (“*Must Carry Order*”). Test results of the W62DE signal submitted in the initial proceeding revealed readings ranging between -85.85dBm and -82.95dBm. Section 76.55(c)(3) of the Commission's rules establishes a threshold of -45 dBm for UHF signals and -49dbm for VHF signals. 47 C.F.R. § 76.55(c)(3).

⁶ Petition at 1.

⁷ *Id.*

⁸ *Id.* at 1-2.

⁹ Opposition at 1-2.

system's headend.¹⁰

6. Section 1.106(c)(1) of the Commission's rules states that reconsideration is appropriate only where the petitioner shows either material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.¹¹ Reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken.¹² We deny W62DE's petition for reconsideration because it does not raise a material legal error or omission pursuant to Section 1.106(c)(1) of the Commission's rules.

7. Reconsideration of the initial findings and conclusions in the *Bureau Order* do not show them to be erroneous. In the *Must Carry Order*, the Commission stated that an LPTV station which asserts must carry status bears the burden of demonstrating its compliance with the statute.¹³ The fact that Mediacom has exercised its discretion to carry two stations that may fail to provide its principal headend with a good quality signal, has absolutely no bearing on whether W62DE is a "qualified" LPTV station and, thus, eligible for mandatory carriage, nor does it make our initial findings erroneous. Consequently, we reaffirm our initial finding that W62DE is not a qualified LPTV station as contemplated by Section 614(h)(2) of the Act.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the Petition for Reconsideration filed by Billy Ray Washington, licensee of low power television station W62DE Television **IS DENIED**.

9. This action is taken pursuant to authority delegated by Sections 0.283 and 1.106 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

¹⁰ *Id.* at 3.

¹¹ 47 C.F.R. §1.106(c)(1).

¹² See *Eagle Radio, Inc.*, 12 FCC Rcd 5105, 5017 (1997).

¹³ *Must Carry Order*, 8 FCC Rcd at 2982.

¹⁴ 47 C.F.R. §§ 0.283 and 1.106.