

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

In the Matter of
Richard C. and Lisa A. Goetz
v.
Charter Communications
Request for Mandatory Carriage of Low Power
Television Station WKRP-LP, Alexandria, TN
CSR-7736-M

MEMORANDUM OPINION AND ORDER

Adopted: July 7, 2008

Released: July 7, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Richard C. and Lisa A. Goetz ("Petitioners"), licensees of low power television ("LPTV") station WKRP-LP ("WKRP" or the "station"), Alexandria, Tennessee, filed the above-captioned complaint seeking mandatory carriage rights for WKRP on Charter Communications' ("Charter") cable system serving Alexandria, pursuant to Section 76.7 of the Commission's rules. Charter filed an opposition, to which Petitioners replied. Charter filed a response to Petitioners' Reply. For the reasons discussed below, we grant Petitioners' complaint.

II. BACKGROUND

2. The Communications Act of 1934, as amended, and the Commission's rules require that cable operators carry on their cable systems "qualified" LPTV stations in certain limited circumstances. An LPTV station that conforms to Part 74 of the Commission's rules is considered to be "qualified" if: (1) the station broadcasts for at least the minimum number of hours required by Commission rules for full power television broadcast stations; (2) the station adheres to Commission requirements applicable to full power television broadcast stations regarding non-entertainment programming and employment practices,

1 Complaint by Richard C. and Lisa A. Goetz, filed December 21, 2007 ("Complaint").

2 Opposition to Must Carry Complaint, filed by Charter Communications, May 9, 2008 ("Opposition"); Reply to Opposition, filed by Richard C. and Lisa A. Goetz, May 20, 2008 ("Reply").

3 Response to Reply, filed by Charter Communications, June 9, 2008 ("Response"). Concurrent with its pleading, Charter filed a motion for leave to file its Response. Although Section 76.7 of the Commission's rules does not provide for a Response to a Reply, we will accept Charter's Response in the interest of fully developing the record in this proceeding.

4 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

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 stations because of the geographic distance of such stations from the low power station's community of license; (3) the station complies with interference regulations consistent with its secondary status; (4) the station 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 ("MSAs") on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) no full power television broadcast station is licensed to any community within the county or other political subdivision of a state served by the cable system.<sup>5</sup>

### III. DISCUSSION

3. Petitioners claim that WKRP satisfies the requirements of Section 76.55(d) of the Commission's rules, and thus is a "qualified" low power station for purposes of the must carry rules.<sup>6</sup> Petitioners state that WKRP provides local news, weather, and sports programming to the Alexandria, Tennessee area 24 hours per day, seven days per week, and that such programming is not provided by the nearby Nashville market.<sup>7</sup> In addition, they claim that WKRP is located 10.36 km from the principal headend used by Charter to serve Alexandria, and that Alexandria is located in Dekalb County, outside of the Nashville MSA.<sup>8</sup>

4. Charter asserts that WKRP is not a "qualified" LPTV station because it "does not provide a signal of adequate strength *and* quality" to its principal headend in Lebanon, Tennessee.<sup>9</sup> In particular, Charter states that, while the station may deliver a signal of adequate strength to the Lebanon headend, the picture quality is "marginal at best."<sup>10</sup> For example, Charter notes that both the September 2007 and April 2008 signal strength studies of WKRP's signal revealed very poor picture quality overall.<sup>11</sup> Charter further asserts, contrary to Petitioners' suggestion, that the Commission has found that a LPTV station may not rely on specialized equipment or alternative delivery methods to cure signal quality deficiencies in the context of a must carry complaint.<sup>12</sup>

5. In their Reply, Petitioners assert that, although Commission rules prohibit LPTV stations from providing receive equipment to address signal quality deficiencies, the two over-the-air signal strength tests conducted by Charter without using specialized equipment have yielded signal levels that

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<sup>5</sup> 47 U.S.C. § 534(h)(2)(A)-(F); 47 C.F.R. § 76.55(d)(1)-(d)(6).

<sup>6</sup> Complaint at 2. Petitioners assert that, because Charter's only concern related to WKRP's compliance with the Commission's signal strength requirements, Charter concedes that WKRP satisfies the remaining LPTV requirements for must carry eligibility. Reply at 1.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

<sup>9</sup> Opposition at 3.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 3-4. Charter states that the September 2007 study clearly indicated the existence of "sparkles" in the picture, and that the April 2008 study revealed that "WKRP's picture remained grainy/snowy and continued to exhibit electrical impulse interference that traveled up the screen at regular intervals." *Id.*; see also Declaration of Benny J. Jackson, VOIP HFC Network Manager, Rifkin Acquisition Partners, LLC, d/b/a Charter Communications, Att. to Opposition. Charter further states that the carrier-to-noise ratio of WKRP's signal was -41dBmV. Opposition at 4.

<sup>12</sup> Opposition at 3, citing *Tri-State Christian TV, Inc. v. Blytheville TV Cable Company*, 17 FCC Rcd 21413 (2002); Response at 2-3.

surpass the Commission's technical requirements.<sup>13</sup> Consequently, WKRP maintains that Charter's over-the-air test results of the station's signal strength are sufficient to justify its carriage on Charter's cable system.<sup>14</sup>

6. We grant Petitioners' complaint. We find that Petitioners have demonstrated that WKRP delivers an over-the-air signal which meets the Commission's standard for a good quality signal at Charter's Lebanon, Tennessee headend.<sup>15</sup> For the purpose of LPTV must carry eligibility, the Commission defines a "good quality signal" as "a signal level of either -45 dBm for UHF signals, or -49 dBm for VHF signals at the input terminals of the signal processing equipment, or a baseband video signal."<sup>16</sup> We note that the September 2007 and April 2008 studies performed by Charter of WKRP's signal yielded average signal strength levels of -39.88 dBm and -48 dBm, respectively, which exceed the Commission's threshold technical requirement of -49 dBm.<sup>17</sup> Indeed, Charter concedes as much, stating "it appears that the Station may deliver a signal of adequate strength at the Lebanon headend."<sup>18</sup> As the Commission has stated, "the signal level measurement standard contained in the [Act] will generally result in a good quality television signal being received at the cable system's headend."<sup>19</sup>

7. While we agree with Charter that low power stations cannot become "qualified" by the use of additional equipment to provide the requisite signal quality to a cable system's principal headend, this is not the situation here. Charter's own tests establish that WKRP's signal meets the Commission's standard for a good quality signal at Charter's headend. Because we find that WKRP provides an over-the-air signal of sufficient signal strength, and WKRP's must carry eligibility as a LPTV station is otherwise uncontested, we grant Petitioners' complaint and require Charter to commence carriage of WKRP's signal within 60 days of release of this Order. In doing so, we note that the Commission has previously stated that, "where a broadcaster's signal strength at the cable headend meets the [Commission's technical] standard but, for reasons beyond the control of the cable operator, a good quality picture is not receivable, the broadcast station and the cable operator should . . . attempt to resolve the problem."<sup>20</sup> Consequently, we urge the parties here to cooperate with each other to improve any alleged picture quality deficiencies.

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<sup>13</sup> Reply at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> See 47 C.F.R. § 76.55(d)(4).

<sup>16</sup> 47 C.F.R. § 76.55(d)(4), note.

<sup>17</sup> See Commercial and NCE Stations, Signal Measurement Equipment List, Attachment to Complaint (summarizing results of signal strength tests conducted on September 6 and 7, 2007); Commercial and NCE Stations, Signal Measurement Equipment List, Attachment to Opposition (summarizing results of signal strength tests conducted on April 22 and 23, 2008).

<sup>18</sup> Opposition at 3.

<sup>19</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket Nos. 92-259, 90-4, 92-295, Report and Order, 8 FCC Rcd 2965, 2990 (1993), ¶ 100 ("Signal Carriage Report and Order").

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

**IV. ORDERING CLAUSES**

8. Accordingly, **IT IS ORDERED**, that the complaint filed by Richard C. and Lisa A. Goetz, licensees of low power television station WKRP-LP, Alexandria, Tennessee, **IS GRANTED** pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(h).

9. **IT IS FURTHER ORDERED** that Charter Communications **SHALL COMMENCE CARRIAGE** of WKRP-LP's signal on its cable system serving Alexandria, Tennessee, within 60 days from the date this Order is released.

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

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