

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

In the Matter of	)	
	)	
Lincoln Memorial University	)	
v.	)	CSR-8132-M
Telecommunications Management, LLC	)	
d/b/a New Wave Communications	)	
	)	
Request for Carriage	)	

MEMORANDUM OPINION AND ORDER

Adopted: June 11, 2009

Released: June 12, 2009

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

I. INTRODUCTION

1. Lincoln Memorial University, licensee of low power television station W18AN, Harrogate, Tennessee (“W18AN”), filed the above-captioned complaint against Telecommunications Management, LLC d/b/a New Wave Communications (“New Wave”), for its failure to carry W18AN on its Middlesborough, Kentucky cable system.¹ An opposition to this complaint was filed on behalf of New Wave to which W18AN replied. For the reasons discussed below, we grant W18AN’s request.

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission’s rules require the carriage of “qualified” low power television (“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) it complies with interference regulations consistent

¹According to the Commission’s records, the community of Middlesborough is part of one physically-integrated cable system (PSID # 007027) operated by New Wave encompassing 6 counties in Kentucky. The communities and areas served are as follows: Whitley County – Williamsburg, Corbin, Rockhold, Faber, Woodbine, unincorporated areas of Whitley County (NE), and unincorporated areas of Whitley County; Bell County – Middlesborough, Straight Creek, Right Ford, Left Fork, Miracle, Cubbage, Calvin, Stoney Fork, Kettle Island, Arjay, unincorporated areas of Bell County (SE) and unincorporated areas of Bell County; Laurel County – Laurel, Fairston, and Lily; Leslie County – unincorporated areas of Leslie County, and Bob Fork Village; Clay County – Goose Rock Village, Big Creek Village, Elk Creek Village, Bear Branch Village, Garrard Village, Hima Village, Sibert Village, Fogertown Village, unincorporated areas of Clay County, and Oneida Township; Knox County – Dowis Chapel, Flatlick, Himyar, Baughman, DeWitt, Mills, Walker, Saltgum, Bimble, Hinkle, Scaff, Girdler, and unincorporated areas of Knox County.

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

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 ("MSAs") 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 support of its complaint, W18AN states that, at the present time, its signal is dark.⁴ However, W18AN states that it expects to return to the air as soon as replacement equipment can be installed and it argues that when it returns to the air, it will meet all of the requirements set forth in Section 614(h)(2) of the Communications Act of 1934, as amended, and Section 76.55(d) of the Commission's rules to be considered a qualified LPTV station for must carry purposes.⁵ W18AN states that it will broadcast for the required minimum number of hours, meet all the relevant requirements imposed on full-power television stations, broadcast news and informational programming that is locally oriented and address local needs not addressed by full-power stations, comply with the Commission's interference rules, and transmit from a location well within the required 35-miles from the cable system headend.⁶ W18AN points out that the cable communities at issue are all outside of the top 160 MSAs, as determined by OMB on June 30, 1990, and are located in Bell County, Kentucky, where no full-power television stations are licensed.⁷ W18AN maintains that, given its proximity to the Middlesborough cable system, it is confident that it will be able to provide a good quality signal once it resumes operations and it affirms its willingness to assist New Wave in conducting signal testing consistent with FCC procedures.⁸

4. W18AN states that it defaulted to must carry status for the 2009-2011 election period because it failed to send a must carry election notice to New Wave by October 1, 2008.⁹ Subsequently, by letter dated December 5, 2009, W18AN states that it made a demand for carriage and, in light of New Wave's prior signal quality concerns, reiterated its claim that it would deliver a good quality signal to the cable system's principal headend.¹⁰ W18AN states that New Wave rejected the carriage demand, by letter dated December 9, 2009, indicating that it was "very concerned about the frequency of technical problems that the station appears to be experiencing."¹¹ W18AN argues that New Wave failed to provide any of the information required in its brief, four sentence denial of carriage and, while admittedly not

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

⁴Complaint at 1-2. W18AN states that it has intermittently been off-the-air over the past year due to a series of unforeseen events, including lightning striking its transmitter and the unavailability of replacement parts.

⁵*Id.* at 3, citing 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

⁶*Id.* at 3-6. W18AN notes that its transmitter is less than 4 miles from New Wave's principal headend in Middlesborough.

⁷*Id.* at 6.

⁸*Id.* at 5-6 n.8. W18AN states that when it initially wrote New Wave last summer regarding carriage prior to the commencement of the current election cycle, New Wave expressed doubts as to the station's signal quality based upon a purported signal test it conducted. However, W18AN points out that at the time the test was conducted, it was off-the-air.

⁹*Id.* at 7.

¹⁰*Id.* at Exhibit 4.

¹¹*Id.* at Exhibit 3.

currently operational, W18AN maintains that it filed this complaint in order to preserve its carriage rights once it resumes its over-the-air operations.¹²

5. In opposition, New Wave states that it operates cable systems in several southern states and asserts that the cable system at issue here is its cable system serving Knox County, Kentucky, whose principal headend is located outside Barbourville, Kentucky.¹³ New Wave states that, in response to W18AN's initial demand for carriage, its technicians conducted signal strength surveys which confirmed that the station did not meet the minimum signal strength threshold of -45 dBm.¹⁴ In response to this complaint, New Wave asserts that it conducted another such test and obtained the same result.¹⁵ Moreover, New Wave argues, despite W18AN's assertion, the cable system's principal headend is not located in Middlesborough, Kentucky (4 miles from the station's transmitter), but in Barbourville, Kentucky, which is approximately 27 miles from W18AN's transmitter.¹⁶ New Wave points out that both the statute and Commission's regulations expressly require that a must carry station must deliver a good quality signal to the principal headend of the cable system.¹⁷ New Wave concludes that because W18AN fails to provide a good quality signal and that, unlike a full commercial station an LPTV station cannot cure its signal quality deficiency, the Commission should deny the complaint.

6. In reply, W18AN argues that the evidence does not conclusively support New Wave's assertion that Barbourville, Kentucky, is the principal headend for its cable system serving Bell County.¹⁸ W18AN states that during the time that it was carried on the cable system serving Middlesborough and surrounding areas in Bell County in the 1990s, to the best of its knowledge, the system distributed the station's signal from its facilities in Middlesborough.¹⁹ Moreover, Commission physical system records and New Wave's own website appear to offer inconsistent information as to headend site, communities served and channel line-ups for Bell County (where Middlesborough is located) and Knox County (where Barbourville is located).²⁰ In any event, W18AN argues that should Barbourville indeed be the principal headend of the cable system serving Bell County, the signal quality tests performed by New Wave are invalid because at the time they were conducted New Wave had been notified that W18AN was not on-the-air.²¹ W18AN therefore requests that the Commission grant its request conditioned upon acceptable signal quality tests once it resumes on-air operations.

7. In our review of the issues raised in this case, we find that there appears to be no disagreement between the parties as to W18AN's eligibility as a qualified LPTV station. Instead, there are two main arguments – a dispute as to the location of New Wave's principal headend, and W18AN's ability to provide a good quality signal to the cable system's principal headend. In *Implementation of the*

¹²*Id.* at 8. W18AN requests that, to the extent any questions regarding signal quality should arise, the Commission make clear that any signal quality testing be done in accordance with established Commission procedure.

¹³Opposition at 2.

¹⁴*Id.* at Exhibits A and B.

¹⁵*Id.* at Exhibit B.

¹⁶*Id.* at 3. New Wave states that the Middlesborough, Kentucky site referenced in the complaint is a remote receive site and is not the principal headend for must carry purposes.

¹⁷*Id.*, citing 47 U.S.C. § 534(h)(1)(iii); *see also Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 4142, 4143 (1993) (“Clarification Order”).

¹⁸Reply at 1.

¹⁹*Id.* at 2.

²⁰*Id.* at 2-3.

²¹*Id.* at 3.

Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, the Commission stated that “. . . we believe that Congress intended to allow the system to select its own principal headend, provided that its choice is reasonable and is not made in order to circumvent the must-carry obligations imposed by the 1992 Act.”²² In light of this, we find no reason to question New Wave’s statement as to the location of its principal headend, particularly as W18AN has provided no information that conclusively proves otherwise. With regard to signal quality, we agree with W18AN that the signal strength tests conducted by New Wave were premature given the fact that W18AN’s own statements indicate that it was off-the-air during that period of time. As a result, we conclude that New Wave has failed to prove that W18AN cannot provide a signal of good quality to its principal headend. We therefore will grant W18AN’s complaint and order New Wave to carry its signal at such time as it provides a signal of good quality to the cable system’s principal headend. We expect that New Wave and W18AN will work cooperatively in conducting signal quality tests and that such tests will be conducted in accordance with established Commission procedures.²³

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.55(d) and 76.56(b)(3) of the Commission’s rules, that the complaint filed by Lincoln Memorial University **IS GRANTED** to the extent indicated above with respect to the Middlesborough, Kentucky cable system operated by Telecommunications Management, LLC d/b/a New Wave Communications. New Wave **IS ORDERED** to commence carriage of W18AN within sixty (60) days of the date that W18AN provides a good quality signal to the cable system’s principal headend.

9. **IT IS FURTHER ORDERED** that W18AN shall notify New Wave in writing of its channel position election within thirty (30) days of the date it provides a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission’s rules.²⁴

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

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division
Media Bureau

²²See 8 FCC RCd 2965, 2968 (1993) (“*Must Carry Order*”).

²³See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 4142 (1993) (“*Clarification Order*”).

²⁴47 C.F.R. §§ 76.57 and 76.64(f).

²⁵47 C.F.R. § 0.283.