

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

In the Matter of

Complaint of Hampton Roads Educational
Telecommunications Association, Inc. v. Charter
Communications, Inc. for Carriage of WHRO-TV,
Hampton-Norfolk, Virginia (Request for Section
403 Investigation))
)
) CSR-8189-M
)
)

MEMORANDUM OPINION AND ORDER

Adopted: December 4, 2009

Released: December 9, 2009

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

I. INTRODUCTION

1. Hampton Roads Educational Telecommunications Association, Inc. (HRETA), licensee of PBS affiliate WHRO-TV, Channel 16, Hampton-Norfolk, Virginia (WHRO or the Station), filed the above-captioned petition seeking an investigation into the designation of the principal headend serving Charter Communications, Inc. (Charter) communities in the Outer Banks of North Carolina, for the purpose of seeking carriage of WHRO in the cable communities. Because HRETA is seeking mandatory carriage for WHRO as a non-commercial station under Section 615 of the Communications Act and Section 76.56 of the Commission's rules, we docketed and will address its Request as a must-carry complaint. Charter filed an opposition to the petition, to which HRETA has replied. As set forth below, HRETA's complaint is dismissed.

1 The specific communities at issue are Corolla, Duck, Kill Devil Hills, Kitty Hawk, Manns Harbor, Manteo, Nags Head, Southern Shores, Stumpy Point, and Wanchese (the cable communities).

2 Request for Section 403 Investigation, CSR-8189-M (Petition).

3 47 U.S.C. § 535.

4 47 C.F.R. § 76.56.

5 47 C.F.R. § 76.7.

6 Opposition to Must Carry Request of Charter Communications, Inc. (Opposition).

7 Reply of Hampton Roads Educational Telecommunications Association, Inc. (Reply).

II. BACKGROUND

2. Pursuant to Section 615 of the Communications Act⁸ and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*,⁹ noncommercial educational television broadcast stations are entitled to assert mandatory carriage rights on cable systems whose “principal headend” is located within either 50 miles of the reference point of the station's principal community of license, or the Grade B service contour of the station.¹⁰ A cable system elects a single principal headend, and may not change that election without good cause.¹¹ In the *Must Carry Order*, the Commission indicated its expectation that

the “principal headend” in the majority of systems will be the headend serving the most subscribers, accommodating the most signal processing equipment, or lying closest to the geographical center of the system.¹²

As indicated in the *Must Carry Order*, established in FCC Rules,¹³ and reaffirmed in the Commission’s cases, a cable operator’s principal headend designation must be reasonable and not made in order to circumvent the operator’s must-carry obligations.¹⁴

III. DISCUSSION

3. HRETA’s petition seeks carriage of WHRO, a noncommercial educational station, in the cable communities. Charter denied carriage of the station on the grounds that it was more than 50 miles from, and did not provide Grade B coverage to, its principal headend in Manteo, North Carolina.¹⁵ WHRO alleges that either a Charter headend located in Suffolk, Virginia, or a headend located in Corolla, North Carolina, actually constitutes the “principal headend” serving the cable communities. The station indicates that it places a Grade B-strength signal over both headends.¹⁶ Therefore, it argues, pursuant to Section 615 of the Communications Act and Section 76.56 of the Commission’s rules, the Commission should require carriage of WHRO in the cable communities.¹⁷

⁸ 47 U.S.C. § 535.

⁹ 8 FCC Rcd 2965 (1993) (*Must Carry Order*).

¹⁰ 47 U.S.C. § 535(b)(1), (1)(2).

¹¹ 47 C.F.R. § 76.5(pp)(2).

¹² *Must Carry Order*, 8 FCC Rcd at 2967-2968, ¶ 9.

¹³ 47 C.F.R. § 76.5(pp)(2).

¹⁴ *Id.*; see also, e.g., *Minority Television Project, Inc. v. AT&T, LLC*, 17 FCC Rcd 22810 (2002).

¹⁵ Petition at 2.

¹⁶ *Id.* at 2, 3. WHRO also notes that the headends are both within 50 miles of its transmitter site, although it does not provide distance measurements to the reference point of the station's principal communities of license. This distinction did not play a role in our analysis.

¹⁷ Reply at 3.

4. Charter's opposition states that the operator's headend at Manteo is the principal headend serving the cable communities, is so designated in Charter's public files, and has served in that capacity for over 20 years (except in the case of Corolla, which Charter states has been served by the Manteo headend since 2001).¹⁸ Charter indicates that the Manteo headend serves all the subscribers in the cable communities, serves as the receive facility for the "vast majority" of programming provided to the communities (including at least one local broadcast station), and contains all of the signal processing equipment serving the cable communities.¹⁹ It also states that the Manteo headend is centrally located to the cable communities.²⁰ Charter describes its Suffolk facility as a "receive site" that transfers received signals to the principal headend at Manteo,²¹ and states that the Corolla facility no longer serves as a headend.²² It calculates the distance between the Manteo headend and the WHRO cities of license as greater than fifty miles, and states that the WHRO Grade B signal does not reach the headend.²³

5. In its reply, HRETA does not dispute the factual statements made by Charter. It instead argues that, because the Suffolk facility is serving to receive television broadcast signals and ultimately transfer them to the cable communities, Charter's failure to designate the Suffolk headend as the principal headend is "unreasonable and intended to evade its must-carry obligations."²⁴

6. Contrary to HRETA's argument, the facts in this case are insufficient to demonstrate that Charter has improperly designated Manteo as its principal headend. The Commission's Must Carry Order established that "when a system has multiple headends, any one of which could be the principal headend," the system may "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."²⁵ Charter indicates that the Manteo headend has served as the principal headend for the cable communities since before passage of the 1992 Cable Act, is properly identified in Charter's public files, and has the characteristics usually associated with a principal headend. HRETA does not provide any evidence to contradict its statements, or provide any reason to question the sworn Declaration or the calculations upon which Charter has based their statements. This is not a situation in which a cable operator has moved its principal headend, resulting in a station losing carriage; on the contrary, HRETA asks Charter to change its long-established principal headend so that it may gain carriage.²⁶ The use by Charter of the Suffolk headend as a receive site for some broadcast signals is insufficient, standing alone, to demonstrate that the continuing reliance

¹⁸ See generally, Declaration of Joel C. Sproat (Declaration) (Provided as an unnumbered appendix to Charter's Opposition).

¹⁹ *Id.*

²⁰ Opposition at 5.

²¹ *Id.* at 3.

²² Declaration (indicating that the Corolla facility once served as a "stand-alone" headend serving Corolla, but that its functions were consolidated into the Manteo facility in 2001).

²³ Opposition at 2.

²⁴ Reply at 2.

²⁵ 8 FCC Rcd at 2968.

²⁶ WHRO does not appear to have ever been carried by Charter in the cable communities.

on the Manteo facility as the principal headend constitutes an unreasonable choice, or one made in order to circumvent Charter's must-carry obligations. Therefore, based on the totality of the evidence in this proceeding, we find insufficient grounds to act on HRETA's petition.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 615(j) of the Communications Act of 1934, as amended, 47 U.S.C. §535(j), and Section 76.56 of the Commission's rules, 47 C.F.R. §76.56, that the captioned petition for special relief (CSR-8189-M), filed by Hampton Roads Educational Telecommunications Association, Inc. **IS DISMISSED**, as discussed herein.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁷

FEDERAL COMMUNICATIONS COMMISSION

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²⁷ 47 C.F.R. § 0.283.