

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

In the Matter of)
Joan T. and Kenneth D. Wright)
v.) CSR-8361-M
Charter Communications VI, LLC)
Request for Carriage)

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2010

Released: December 17, 2010

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

I. INTRODUCTION

1. Joan T. and Kenneth D. Wright, licensees of low power television station WGBS-LD (Ch. 11), Carrollton, Virginia ("WGBS-LD"), filed the above-captioned complaint against Charter Communications VI, LLC ("Charter"), for its failure to carry WGBS-LD on its Isle of Wight County, Virginia cable system. An opposition to this complaint was filed on behalf of Charter to which WGBS-LD replied. For the reasons discussed below, we grant WGBS-LD'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.1 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 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.2

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

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

III. DISCUSSION

3. In support of its complaint, WGBS-LD argues that it is a “qualified” low power station pursuant to Section 76.55(d) of the Commission’s rules and is thus entitled to carriage on Charter’s Isle of Wight County cable system.³ WGBS-LD states that it broadcasts 24 hours per day; adheres to all relevant Commission requirements imposed on full-power television stations regarding non-entertainment, political and children’s programming; broadcasts news and informational programming that is locally oriented and addresses local needs not addressed by full-power stations; complies with the Commission’s interference rules; Carrollton, its community of license, has a population of less than 35,000; and it transmits from a location within the required 35-miles from the cable system’s headend.⁴ WGBS-LD points out that both its community of license and the franchise area of Charter’s cable system are located outside of the largest 160 MSAs, as determined by OMB on June 30, 1990, and are located in Isle of Wight County, where no full-power television stations are licensed.⁵ WGBS-LD asserts that, given its proximity to the Isle of Wight County cable system, it is confident that it will be able to provide a good quality signal to Charter’s principal headend.⁶ Furthermore, WGBS-LD argues that, because less than one-third of the activated channels on Charter’s system are used to carry mandatory local commercial television stations, Section 76.56(b) of the Commission’s rules states that WGBS-LD is entitled to mandatory carriage on the system.⁷

4. WGBS-LD states that when it was initially granted its Digital Low Power TV license on December 16, 2009, it was licensed to the community of Hampton, Virginia.⁸ On March 12, 2010, WGBS-LD states that it requested that its community of license be changed to Carrollton, Virginia, a request which was granted by the Commission on March 14, 2010.⁹ By letter dated May 6, 2010, WGBS-LD states that it notified Charter of its obligation to carry its signal on its Isle of Wight County system.¹⁰ Charter’s June 21, 2010 subsequent denial, which was not filed within the 30-day response time mandated by Section 76.61(a)(2) of the Commission’s rules, maintained that WGBS-LD failed to deliver a good quality signal to Charter’s principal headend.¹¹ WGBS-LD states that, by letter dated July 20, 2010, it responded to Charter’s first denial, requesting a re-test of its signal because it felt that good engineering practices were not used by Charter in its signal quality test.¹² Indeed, WGBS-LD argues that a review of the signal strength test conducted by Charter indicates that the antenna was not oriented in the direction of WGBS-LD’s maximum signal; the test was conducted over a two-hour period, not the required 4-hour period; a recent certificate of calibration was not attached; no pattern information regarding the receive antenna used was included; and the type of coax or line losses of the feeder line from the receive antenna

³Complaint at 1.

⁴*Id.* at 9-10 and Exhibit D.

⁵*Id.* at 11 and Exhibits E and J.

⁶*Id.* at 11.

⁷*Id.* at 12, citing 47 C.F.R. § 76.56(b).

⁸*Id.* at 5.

⁹*Id.* at 5 and Exhibit E.

¹⁰*Id.* at Exhibit F.

¹¹*Id.* at Exhibit G; *see also* 47 C.F.R. § 76.61(a)(2).

¹²*Id.* at Exhibit H. In that same letter, WGBS-LD states it requested that Charter a) specify the size of feedline used in the first test; b) calibrate its analyzer in light of a 2.5 year old calibration listed in the test; c) allow WGBS-LD to see the test setup and be present so that the test could be conducted jointly; d) allow WGBS-LD to acquire and install any equipment or feedline necessary to deliver a good quality signal to the Charter headend.

to the analyzer was not listed.¹³ WGBS-LD asserts that the instant must carry was filed within 60 days of Charter's failure to respond to WGBS-LD's May 6, 2010 demand for carriage.¹⁴ WGBS-LD therefore requests that the Commission grant its request for carriage.

5. In opposition, Charter argues that the Commission should reject WGBS-LD's complaint because the station is not a "qualified" low power television station for must carry purposes.¹⁵ Charter states that both the 1992 Cable Act and the Commission's rules have stringent eligibility requirements that LPTV stations must meet in order to qualify for must carry status, among which is the station's ability to deliver a good quality signal to the cable system's principal headend.¹⁶ Charter points out that it notified WGBS-LD of its failure to deliver a good quality signal in a letter dated June 21, 2010.¹⁷ In its response, Charter states that WGBS-LD claimed that Charter did not use good engineering practices in its signal strength test; arguments which were reiterated in its complaint.¹⁸ Charter states that it subsequently re-tested WGBS-LD's signal in order to resolve any doubt as to the station's ability to provide a good quality signal.¹⁹ In that test, Charter states that it took a total of 11 measurements over a 24-hour period, the first five of which were taken at the end of the first 4-hour period with five additional measurements taken at 4-hour intervals for the remainder of the 24-hours.²⁰ Charter states that it also used a newly-calibrated analyzer, an antenna oriented to azimuth 54, and a cable of a "reasonable type and length" as requested by WGBS-LD.²¹ Charter argues that the re-test demonstrated that WGBS-LD does not provide a good quality signal to the cable system's principal headend. Moreover, as an LPTV station, Charter points out that, while it is prepared to work with the station to test its signal should the Commission require it, such requirement should include the condition that WGBS-LD, unlike a full-power television station, may not cure a poor quality signal using additional specialized equipment.²²

6. In reply, WGBS-LD argues that Charter does not contest the fact that its cable system does not devote one-third of its channel space to local commercial television stations, thus requiring it to carry a "qualified" low power station.²³ WGBS-LD also argues that Charter does not contest the fact that WGBS-LD meets the criteria set forth in Section 76.55(d) of the Commission's rules.²⁴ Charter's only argument, states WGBS-LD, is its allegation that WGBS-LD does not deliver a good quality signal to the system's principal headend, based on signal strength tests performed on June 2, 2010, and again on

¹³*Id.* at Exhibit G.

¹⁴*Id.* at 1. WGBS-LD states that Charter received this letter on May 7, 2010 and a reply would have been due on June 6, 2010. Charter did not respond until June 21, 2010.

¹⁵Opposition at 1.

¹⁶*Id.* at 1-2, citing 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d); *see also Complaint of Folse Productions, Inc. v. Helicon Cablevision of Louisiana*, 10 FCC Rcd 13644, 13645 (1995); *Complaint of W53AO-TV v. Crown Cable*, 8 FCC Rcd 8537 (1993).

¹⁷*Id.* at 2, citing Complaint at Exhibit G.

¹⁸*Id.* at 2-3.

¹⁹*Id.* at Exhibit 1.

²⁰*Id.*

²¹*Id.*

²²*Id.* at 3 n.11, citing *Tri-State Christian TV, Inc. v. Blytheville TV Cable Company*, 21 FCC Rcd 207, 208 (2006), citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2991 (1993) ("*Must Carry Order*").

²³Reply at 4.

²⁴*Id.* at 4-5.

August 29-30, 2010.²⁵ WGBS-LD argues, however, that because it was not invited to participate in the August 29-30 testing and verify the signal strength measurements, it is unclear whether these measurements were taken in accordance with the Commission's requirements.²⁶ WGBS-LD maintains that there are major inconsistencies between the first and second tests: a) Charter tested WGBS-LD at an antenna height of 75 feet on June 2, while on August 29 it used an antenna height of 50 feet; b) the reduction in antenna height on August 29 amounts to a 33 percent reduction in total height as well as a conflict in obtaining the best line of sight over the rural Virginia treeline; c) Charter used different antennas on June 2 and August 29,²⁷ and d) for the August 29 test, Charter failed to provide the radiation pattern for the antenna used.²⁸ WGBS-LD argues that in its analysis, both tests contain multiple deficiencies and should not be relied on, particularly as signal strength tests performed by the station engineer on October 7, 2010 found that WGBS-LD provided a signal level above the required minimum.²⁹ WGBS-LD asserts that it is prepared to work with Charter in conducting another test of its signal and is also committed to purchasing a commercial receive antenna more suited for the VHF Band and Channel 11 digital reception.³⁰ WGBS-LD argues, however, that it believes that in any re-test, Charter should test at a height of 75 feet.³¹ In addition, WGBS-LD maintains that the Commission should allow WGBS-LD to acquire and install any equipment or feedline necessary to deliver a good quality signal to the Charter headend.³²

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 WGBS-LD's eligibility as a qualified LPTV station. Instead, the argument appears to be a dispute regarding WGBS-LD's ability to provide a good quality signal to the cable system's principal headend. Charter conducted two signal strength tests of WGBS-LD's signal, the first of which was on June 2, 2010, prior to Charter's denial of WGBS-LD's demand for carriage. When WGBS-LD argued in its must carry complaint that Charter did not use good engineering practices in conducting its test, Charter re-tested WGBS-LD on August 29-30, 2010 and submitted the results in its opposition to the complaint. Upon analysis we agree with WGBS-LD that there are significant discrepancies sufficient to question Charter's conclusion that WGBS-LD fails to provide a good quality signal. Good engineering practices require, but are not limited to, that when measuring a station's signal strength, a cable operator use an antenna which is the functional equivalent of those that it generally uses to receive other broadcast stations' signals at its headend.³³ In addition, the antenna should be placed at the same general height as others and be oriented towards the subject station.³⁴ In this instance, Charter's first test was performed with an antenna, with a peak gain of 14.5 dBi, which it generally uses to receive other stations. However, as this antenna is currently used by Charter to receive broadcast signals from

²⁵*Id.* at 5.

²⁶*Id.* at 6.

²⁷*Id.* at 7. WGBS-LD states that on June 2, Charter used a commercial Wade WL-7-13/HP antenna designed specifically for VHF high band, with a factory gain specification of 14.5 dBi. On August 29, Charter used a consumer Antenna Craft HBU33 available at Radioshack, used to receive High -Band VHF and UHF channels 7-69 with a factory gain specification of 7.6 dB.

²⁸*Id.* at 6-8.

²⁹*Id.* at 5 and 9.

³⁰*Id.* at 9.

³¹*Id.* at 13.

³²*Id.*

³³See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 4142, 4145 (1993) ("Clarification Order").

³⁴*Id.*

other locations, it could not be oriented properly to receive WGBS-LD's signal. Charter's second test utilized an antenna with a peak gain of only 7.6 dBi, a difference of 6.9 dB. The second test found an average signal level of -15.68 dBmV, despite its lower gain and being mounted at a lower height, but now oriented directly at WGBS-LD's signal.

8. For a station to qualify for must carry rights, a signal level of no less than -12.25 dBmV must be received at Charter's headend. Even ignoring the additional signal gain that would have resulted from measuring WGBS-LD's signal at the same height as the first test, we can determine that, had Charter used the antenna from the first test, an additional 6.9 dB of signal strength would have been observed, resulting in an average signal level of -8.78 dBmV, well above the threshold to qualify for carriage. While there are additional discrepancies between Charter's first and second tests, it is clear that had Charter used the first antenna, which it uses to receive other broadcast stations, WGBS-LD's signal would exceed the required signal level. We therefore will grant WGBS-LD's complaint and order Charter to carry its signal on its cable system unless it can demonstrate that WGBS-LD fails to provide a good quality signal to its principal headend. In this regard, Charter will have 20 days from the date of this order to submit an engineering study demonstrating that WGBS-LD fails to place the required signal strength over Charter's principal headend. The test must follow good engineering practices including the use of a functionally-equivalent antenna that Charter uses to receive other stations, at a similar height, as well as being properly oriented at WGBS-LD's broadcast facility. We also expect the parties to cooperate in this matter. Accordingly, Charter shall give WGBS-LD prior notice of and an opportunity to be present at any test of WGBS-LD's signal strength. Absent such a showing, Charter must commence carriage of WGBS-LD within 60 days of the date of this order. Finally, we also agree with Charter that, as stated in the *Must Carry Order*, and pursuant to Section 614(h)(B)(iii) of the Communications Act, low power television stations, unlike full-power television stations, are not entitled to improve their signal with additional equipment.³⁵ Because this is a statutorily mandated requirement, we cannot grant WGBS-LD's request to improve its signal with additional equipment.

IV. ORDERING CLAUSES

9. 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 Joan T. and Kenneth D. Wright **IS GRANTED** to the extent indicated above with respect to the Isle of Wight County, Virginia cable system operated by Charter Communications VI, LLC. Charter **IS ORDERED** to commence carriage of WGBS-LD within sixty (60) days of the date of this order **UNLESS** Charter submits an engineering study that complies with the requirements set forth above within 20 days of the date of this order that demonstrates that WGBS-LD fails to place an adequate signal strength over Charter's principal headend.

³⁵See *Must Carry Order*, 8 FCC Rcd at 2991; see also 47 U.S.C. § 534(h)(B)(iii).

10. **IT IS FURTHER ORDERED** that WGBS-LD shall notify Charter in writing of its channel position election within thirty (30) days of the date of this order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.³⁶

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁷

FEDERAL COMMUNICATIONS COMMISSION

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

³⁶47 C.F.R. §§ 76.57 and 76.64(f).

³⁷47 C.F.R. § 0.283.