

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

In the Matter of)	
)	
Lenfest Broadcasting, LLC)	CSR-8816-M
Licensee of Station WMCN-TV,)	Docket No. 13-174
Atlantic City, New Jersey)	
)	
v.)	
)	
RCN Telecom Services of Philadelphia, LLC)	

MEMORANDUM OPINION AND ORDER

Adopted: January 23, 2014

Released: January 24, 2014

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

I. INTRODUCTION

1. Lenfest Broadcasting, LLC (“Lenfest”), licensee of full-power commercial television station WMCN-TV, Atlantic City, New Jersey (“WMCN”), filed a must carry complaint¹ pursuant to Sections 76.7 and 76.61 of the Commission’s rules² against RCN Telecom Services of Philadelphia, LLC (“RCN”), seeking carriage on the latter’s cable systems serving Delaware County, Pennsylvania. After seeking an extension of time to do so, RCN has filed an opposition to this complaint;³ no reply was filed. For the reasons stated below, we grant Lenfest’s complaint.

II. BACKGROUND

1. Pursuant to Section 614 of the Communications Act of 1934, as amended (the “Act”), and the implementing rules adopted by the Commission, local commercial television broadcast stations, such as WMCN, are entitled to assert mandatory carriage rights on cable systems located within their market.⁴ A station’s market for this purpose is its “designated market area,” or DMA, as defined by The Nielsen Company.⁵

¹ Complaint for Carriage by Lenfest Broadcasting, LLC, filed June 26, 2013 (“Complaint”).

² 47 C.F.R. §§ 76.7 and 76.61.

³ See Opposition by RCN, filed Aug. 23, 2013; Consent Motion for Extension of Time by RCN, filed Aug. 6, 2013.

⁴ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2975-77, ¶¶ 41-46 (1993) (“*Must Carry Order*”). The Commission has subsequently extended mandatory carriage rights to digital television stations under Section 614(a) of the Act and has amended its rules accordingly. See *Carriage of Digital Television Broadcast Signals First Report and Order*, See 16 FCC Rcd 2598, 2606, ¶¶ 15-16, 2610 ¶ 28 (2001) (“*DTV Must Carry Order*”); see also 47 C.F.R. §76.64(f)(4).

⁵ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available,

2. Pursuant to Section 325 of the Act and the Commission's rules adopted in the *Must Carry Order*, no commercial television broadcast signal may be retransmitted on a cable system without the express authority of the originating station.⁶ This authority may be expressed by a station's election of mandatory carriage pursuant to Section 614 of the Act, or by its election of retransmission consent. Television stations having mandatory carriage rights make their carriage elections at three year intervals for each cable system on which they wish to be carried.⁷ A station failing to elect retransmission consent by the October 1st carriage election deadline prior to each three year carriage cycle defaults to must carry status.⁸ The Commission has clarified that "broadcast stations may assert their carriage and channel positioning rights at any time so long as they have not elected retransmission consent."⁹

III. DISCUSSION

3. WMCN is a local commercial television station, licensed to Atlantic City and assigned by The Nielsen Company to the Philadelphia DMA – the same market containing the Delaware County RCN cable system communities on which Lenfest seeks carriage for WMCN.¹⁰ Lenfest states WMCN is a default must carry station by virtue of having failed to make an affirmative carriage election by October 1, 2011.¹¹ Furthermore, Lenfest asserts WMCN can deliver a good quality signal to RCN's principal cable system headend, but in the event RCN is not able to receive this signal, Lenfest promises to provide the equipment and to bear the costs for delivering a good quality signal.¹² To Lenfest's knowledge, the station has yet to be carried by RCN in the communities.¹³ On April 5, 2013, Lenfest sent a carriage demand to RCN arguing that RCN was in violation of its carriage obligations and attaching a list of communities on which it sought carriage for WMCN.¹⁴ Lenfest states RCN failed to reply to the request for carriage within the requisite 30-day timeframe or thereafter.¹⁵ As a result, Lenfest filed a timely complaint. In its Opposition, RCN argues WMCN does not deliver a signal of sufficient strength to its principal headend located over 106 miles away, and it asserts it has provided signal strength tests demonstrating this fact – although such tests are not attached to its opposition.¹⁶

4. RCN has not disputed that it never responded to WMCN's carriage demand with a rejection letter, nor did it ever respond with any letter containing the information required by Section 76.61(a)(2) of

commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area as determined by The Nielsen Company. 47 C.F.R. § 76.55(e)(2).

⁶ See 47 U.S.C. § 325; *Must Carry Order*, 8 FCC Rcd 2965, 2996, ¶ 129, *et seq.* (1993).

⁷ See 47 U.S.C. § 534; 47 C.F.R. § 76.56; 47 C.F.R. § 76.64(f)(2).

⁸ 47 C.F.R. § 76.64(f)(3).

⁹ *Broadcast Signal Carriage Issues*, 8 FCC Rcd at 4144, ¶ 15 (1993).

¹⁰ Complaint at 2.

¹¹ See *id.* at 3; *see also* 47 C.F.R. § 76.64(f)(3).

¹² See Complaint at 3.

¹³ See *id.*

¹⁴ See *id.* at 3 & n.10 (citing Exh. B, Carriage Demand Letter by Jon Gorchow, President, Lenfest Broadcasting, LLC, to RCN Telecom Services of Philadelphia, LLC, dated April 5, 2013.) ("April 5 Letter"); *see also* April 5 Letter at Exh. A, RCN Cable System Communities.

¹⁵ *Id.* at 3-4.

¹⁶ Opposition at 1-2.

our rules.¹⁷ Furthermore, it failed to attach its purported signal studies to its Opposition even though it asserted it did so.¹⁸ No other evidence has been provided countering that WMCN-TV is a local commercial television station entitled to carriage on RCN's cable systems serving the Delaware County communities. If WMCN fails to provide a good quality signal to RCN's Delaware County cable system, Lenfest has committed to providing the necessary equipment and to bear the cost for delivering a good quality signal to RCN. Accordingly, we will order RCN to carry WMCN-TV as a must-carry station on its cable system in the aforementioned communities.

IV. ORDERING CLAUSE

5. Accordingly, **IT IS ORDERED** that pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, the must carry complaint filed by Lenfest Broadcasting, LLC, licensee of commercial broadcast television stations WMCN-TV, Atlantic City, New Jersey, seeking carriage on certain Delaware County cable systems operated by RCN Telecom Services of Philadelphia, LLC **IS GRANTED**, and in accordance with Section 76.61(a)(4) of the Commission's rules, 47 C.F.R. § 76.61(a)(4), if WMCN-TV provides a good quality signal to RCN's principal headend, RCN **SHALL COMMENCE CARRIAGE** of WMCN-TV's signal on its Delaware County cable systems.

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

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ See 47 C.F.R. § 76.55(a)(2) ("If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.")

¹⁸ See Opposition at 2.