

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

In the Matter of)	
)	
Ellington Broadcasting, WPRQ-LD)	CSR-8933-M
)	MB Docket No. 17-58
v.)	
)	
)	
Cable One Inc.)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 24, 2017

Released: July 24, 2017

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

I. INTRODUCTION

1. Ellington Broadcasting, licensee of Low Power Television Station WPRQ-LD, Clarksdale, Mississippi (WPRQ-LD), has filed the above-captioned complaint against Cable One Inc. (Cable One) for its refusal to carry WPRQ-LD on its cable system serving Cleveland, Mississippi.¹ Cable One filed an opposition to the complaint, to which WPRQ-LD filed a reply.² Issues with Cable One's signal quality testing resulted in the Bureau sending Cable One a letter seeking clarification of certain facts.³ Cable One then filed a Clarification letter, to which WPRQ-LD filed a response.⁴ For the reasons discussed below, we provisionally grant WPRQ-LD's carriage. However, we will provide Cable One the opportunity to provide conclusive evidence in accordance with the good engineering practices discussed herein within 20 days of the release of this Order that WPRQ-LD does not provide a good quality signal to Cable One's Cleveland headend.

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.⁵ 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

¹ Ellington Broadcast Complaint, filed March 28, 2017 (Complaint).

² Opposition of Cable One, filed April 21, 2017 (Opposition); Reply of WPRQ-LD, filed May 1, 2017 (Reply).

³ See Letter from Steven A. Broeckaert, Senior Deputy Chief, Policy Division, FCC Media Bureau, to David Ellington, Ellington Broadcasting, and Craig A. Gilley, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C. (May 23, 2017 Letter).

⁴ Cable One Inc. Clarification Letter, filed June 2, 2017 (Clarification Letter); Reply of WPRQ-LD to Clarification Letter, filed June 12, 2017 (Clarification Letter Reply). The Media Bureau's May 23, 2017 Letter indicated that it would allow a reply from WPRQ-LD if it deemed necessary.

⁵ 47 U.S.C. § 534(c)(1); 47 CFR §76.56(b)(3).

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 principal headend and delivers to the 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 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.⁶

III. DISCUSSION

3. We begin our analysis by noting that the Commission does not have the authority to waive the rules that have been statutorily promulgated by Congress with respect to what factors define a "qualified" low power station.⁷ The Commission must enforce the statute as drafted.⁸ As outlined above, Congress has identified six factors that determine whether a low power station is "qualified" and therefore entitled to mandatory carriage rights.⁹ Because a low power television station must meet each of the six criteria required by the Act and the Commission's rules, its failure to meet just one is fatal to its request for mandatory carriage.¹⁰

4. In its Complaint, WPRQ-LD claims that it is a qualified LPTV station, and seeks mandatory carriage on Cable One's Cleveland, Mississippi cable system.¹¹ WPRQ-LD filed a formal request for cable carriage with Cable One on January 17, 2017.¹² However, Cable One did not reply to WPRQ-LD's carriage request.¹³ WPRQ-LD argues that its carriage demand letter to Cable One established that it met all six requirements as required under the Communication's Act for mandatory carriage.¹⁴

5. In Opposition, Cable One asserts that it opposes WPRQ-LD's request for carriage on Cable One's Cleveland system because WPRQ-LD fails to provide a good quality signal to the system's principal headend.¹⁵ Cable One states that the "communities served by the Cleveland System are served by a principal headend located in the nearby community of Clarksdale, Mississippi."¹⁶ To support its contention, Cable One provided signal tests that it conducted of WPRQ-LD.¹⁷ On January 30, 2017, Cable One had a signal strength test conducted of WPRQ-LD's signal in Clarksdale.¹⁸ On April 11, 2017,

⁶ 47 U.S.C. § 534(h)(2); 47 CFR § 76.55(d).

⁷ See 47 U.S.C. § 534(h)(2)(A)-(F).

⁸ See *Continental Broad. Corp. v. Jones Intercable, Inc.*, 9 FCC Rcd 2550, 2551, ¶ 8 (CSB 1994).

⁹ See 47 USC § 5334(h)(2)(A)-F; 47 CFR § 76.55(d)(1)-(6)

¹⁰ See *Continental Broad. Corp. v. Jones Intercable, Inc.*, 9 FCC Rcd at 2551, ¶ 7.

¹¹ Complaint at 1.

¹² See *id.*

¹³ See *id.*

¹⁴ *Id.* Attach 2.

¹⁵ Opposition at 1.

¹⁶ See *id.* at 2.

¹⁷ See *id.* Exhibits.

¹⁸ *Id.* Exhibit 1.

Cable One had a signal strength test conducted of WPRQ-LD's signal in Cleveland.¹⁹ According to these tests, WPRQ-LD's signal strength readings were between -80.4 and -93.9 dBm, well below the -61 dBm threshold.²⁰ Based upon these results, Cable One asserts that the signal quality tests establish that WPRQ-LD "is unable to deliver any viewable picture at all to the *Clarksdale*, MS headend."²¹ Cable One asserts that this failure disqualifies the Station from mandatory carriage on Cable One's *Cleveland* cable system.²²

6. In Reply, WPRQ-LD argues that Cable One has provided conflicting information regarding the location of the Cleveland System's principal headend.²³ Cable One's general manager informed WPRQ-LD that the principal headend is in Cleveland.²⁴ However, Cable One's Opposition states that the principal headend is in Clarksdale.²⁵ Moreover, Cable One contradicts this assertion in its Clarification Letter stating that the Cleveland System's principal headend is located in Cleveland.²⁶ WPRQ-LD believes that the principal headend information is material because WPRQ-LD is located and licensed in Clarksdale.²⁷ WPRQ-LD states that its transmit antenna is only 3.55 miles to the southeast of Cable One's principal receive tower in Clarksdale.²⁸ In addition, WPRQ-LD has been carried on Cable One's Clarksdale system for twenty years.²⁹ Thus, if Cable One's Cleveland System is actually located in Clarksdale, WPRQ-LD does not understand how Cable One can assert that it fails to provide a good quality signal when it has been doing so for over twenty years.

7. WPRQ-LD also questions Cable One's signal testing. WPRQ-LD asserts that the signal testing done at the Clarksdale headend is invalid because it is not based on good engineering practices for measuring a good quality signal.³⁰ In particular, WPRQ-LD indicates that Cable One positioned the antenna to face northeast, even though WPRQ-LD's transmitting antenna is 3.55 miles southeast of Cable One's Clarksdale headend.³¹ WPRQ-LD also questions the make and model of the testing antenna Cable One used as well as Cable One's inability to receive WPRQ-LD's signal.³² The test contains a diagram sketch for the Cleveland headend even though it was conducted at Clarksdale.³³ Furthermore, WPRQ-LD questions the utility of the signal test done at the Cleveland headend because Cable One has asserted that Cleveland is not a principal headend.³⁴ In addition, WPRQ-LD argues the Cleveland headend test should

¹⁹ Id. Exhibit 2.

²⁰ Id. at 2.

²¹ Id. (emphasis added).

²² Id. (emphasis added).

²³ WPRQ-LD has alleged that Cable One filed its opposition late. However, the Media Bureau's Public Notice for WPRQ-LD's Complaint was not issued until April 20, 2017. Thus, Cable One's opposition was timely filed.

²⁴ Reply at 2.

²⁵ Id.

²⁶ Clarification Letter at 2.

²⁷ Reply at 2.

²⁸ Id.

²⁹ Id. at 3-4. WPRQ-LD, channel 12, is listed on Cable One's Clarksdale Cable System as a local channel. See <http://www.cableone.net/LI/Pages/localchannellineup.aspx?cmd=map&m=15>.

³⁰ Reply at 3-5.

³¹ Id. at 3.

³² Id. at 3-4.

³³ Id.

³⁴ Id. at 5.

be dismissed for the lack of good engineering practices in conducting the test.³⁵ WPRQ-LD indicates that one of its employees attended the Cleveland test, and during the test, Cable One used a damaged, low gain single VHF antenna in poor condition with a splitter connected to it and did not orient the antenna to receive WPRQ-LD.³⁶ Thus, WPRQ-LD asserts Cable One's tests of WPRQ-LD's signal cannot be trusted as accurate.³⁷

8. After reviewing the pleadings, we determined that Cable One's signal testing for WPRQ-LD in both Cleveland and Clarksdale had created substantial confusion as reflected in WPRQ-LD's Reply. As a result, on May 23, 2017, the Media Bureau sent a Letter to the parties seeking clarification from Cable One about "where and why the signal tests were conducted..."³⁸ Specifically, the Bureau asked Cable One to clarify why it conducted a signal test in Clarksdale when WPRQ-LD sought carriage in Cleveland.³⁹ Additionally, the letter sought clarification from Cable One as to the location of its principal headend.⁴⁰

9. In response to our Letter, Cable One filed a Clarification Letter that reiterated their opposition to carriage of WPRQ-LD based on its failure to "deliver an over-the-air good quality signal to the requested system's designated principal headend[]..."⁴¹ Cable One states that the "[Cleveland] cable system's designated principal headend, where all of the other off-air broadcast stations carried by the system are received for retransmission, is located near the system's main office in Cleveland[, Mississippi]."⁴² However, Cable One did not rebut WPRQ-LD's allegations or clarify the issues as requested in our May 23, 2017 Letter. Rather, Cable One submitted new signal tests of WPRQ-LD's signal from Cleveland that were conducted on May 23, 2017.⁴³ According to Cable One, this new test was conducted using a "high gain VHF/UVF diamond antenna oriented northeast directly at WPRQ-LD's transmitter..."⁴⁴ Cable One goes on to conclude that these tests produced results between -123.45 dBm and -127.05 dBm, well below the Commission's -61 dBm threshold for a good quality signal, rendering WPRQ-LD ineligible for "mandatory carriage on the Cleveland system."⁴⁵

10. WPRQ-LD filed a reply to Cable One's Clarification Letter arguing that Cable One's Clarification Letter failed to address "the questionable data and comments made during their initial signal tests" and "merely claims to have performed [a] new signal test[]."⁴⁶ According to WPRQ-LD, Cable One did not contact them regarding the new signal test.⁴⁷ WPRQ-LD also asserts that these new tests do not follow good engineering practices as required by the Commission.⁴⁸ WPRQ-LD notes that the tests are dated May 23, the same day the Bureau sent the Letter requesting clarification, so it is doubtful that

³⁵ *Id.* at 5-8.

³⁶ *Id.* at 6; Opposition Exhibit 4.

³⁷ *Id.* at 8.

³⁸ May 23, 2017 Letter at 2.

³⁹ *Id.* at 1.

⁴⁰ *Id.* at 1-2.

⁴¹ Clarification Letter at 1.

⁴² *Id.* at 2.

⁴³ *Id.* at 2; Clarification Exhibit 1.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Clarification Letter Reply at 1.

⁴⁷ *Id.* at 2

⁴⁸ *Id.* at 1.

these tests were made in response to the Letter.⁴⁹ WPRQ-LD also questions the quality of the testing. For example, Cable One stated in their Clarification Letter that the signal test was conducted using a “high gain VHF/UHF diamond antenna.”⁵⁰ However, WPRQ-LD contends that this statement is false because Cable One’s form for the new signal test listed a consumer grade “Mediasonic HOMEWORX HDTV Outdoor Antenna” as the antenna used for signal testing.⁵¹ According to WPRQ-LD, this is a very low grade, 3 Db, gain antenna made for consumer home use, and can be purchased at Walmart for \$24.99.⁵² WPRQ-LD also questions Cable One’s assertion that the antenna used for testing was installed in 1994, because there was no “HDTV” broadcast signals in the United States before 1994.⁵³ Thus, WPRQ-LD concludes it is impossible that a consumer home HDTV antenna was installed in 1994 on the cable television receive tower.⁵⁴ WPRQ-LD also states that a visual inspection of Cable One’s Cleveland tower indicates that no “Mediasonic HOMEWORZ HDTV” antenna is even currently installed.⁵⁵ Further, WPRQ-LD argues that not only is Cable One’s signal testing of WPRQ-LD inconsistent with Commission standards, Cable One has not afforded WPRQ-LD the same treatment as other stations received at their headend site.⁵⁶ According to WPRQ-LD, Cable One’s Cleveland tower contains three VHF diamond quad array antennas for receiving VHF broadcast stations.⁵⁷ WPRQ-LD asserts that Cable One affords other stations the use of these antennas, as opposed to the Mediasonic HDTV consumer antenna used by Cable One in WPRQ-LD signal testing.⁵⁸ Consequently, WPRQ-LD concludes Cable One has once again failed to provide signal tests for WPRQ-LD that comply with the Commission’s standards for good engineering, because of their questionable data, improper antenna equipment, and testing methods.⁵⁹ As such, WPRQ-LD requests that the Commission grant carriage to WPRQ-LD on Cable One’s Cleveland cable system.⁶⁰ Additionally, WPRQ-LD requests the Commission require Cable One to provide similar treatment to WPRQ-LD as other stations on their Cleveland tower, and provide WPRQ-LD with a new high gain VHF diamond quad array antenna precisely peaked to receive WPRQ-LD along with a new coaxial cable.⁶¹ WPRQ-LD also states that it is carried by three cable systems in the Mississippi Delta region, and it provides an “over the air signal of good quality to all the cable systems.”⁶²

11. We will provisionally grant WPRQ-LD’s petition. WPRQ-LD’s complaint was timely filed pursuant to section 76.7(c)(4)(iii) of the Commission’s rules within 60 days of Cable One’s refusal of carriage.⁶³ Additionally, there appears to be no disagreement between the parties that WPRQ-LD

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*; Clarification Letter at 2.

⁵¹ Clarification Letter Reply at 2; Clarification Letter Exhibit 1.

⁵² Clarification Letter Reply at 2; Clarification Letter Reply Exhibit 2.

⁵³ Clarification Letter Reply at 3.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 4-5

⁵⁷ *Id.* at 4; Clarification Letter Reply Exhibit 4.

⁵⁸ Clarification Letter Reply at 5.

⁵⁹ *Id.* at 2-3.

⁶⁰ *Id.* at 6.

⁶¹ *Id.*

⁶² *Id.* at 3. For example, WPRQ-LD provides an over-the-air signal to Suddenlink Communications in Helena-West, which is 26 miles away from WPRQ-LD’s transmitter.

⁶³ 47 CFR § 76.7(c)(4)(iii).

satisfies five of the six requirements set forth in the Commission's rules to be considered a qualified LPTV station.⁶⁴ The parties' only dispute is over WPRQ-LD's ability to provide a good quality signal to Cable One's Cleveland principal headend. We are not persuaded by Cable One's Clarification Letter, or additional test of WPRQ-LD's signal at the Cleveland headend that WPRQ-LD has failed to produce a good quality signal. Even after a request for clarification, Cable One still appears to fail to comply with the Commission's standards for good engineering. In their Clarification Letter, Cable One indicates that because WPRQ-LD alleged numerous defects in the April 11 test, rather than rebutting those allegations, Cable One retested "WPRQ-LD's signal at the Cleveland headend on May 23, 2017, using different equipment [and] new parameters in line with correcting for Ellington's technical complaints... The results of this test, reported on the test report attached hereto as Exhibit 1, were exactly the same, no good quality over-the-air signal received at the headend. Indeed, receive levels for the station's signal came in between -123.45 dBm and -127.05 dBm, again well below the Commission's -61 dBm threshold for a good quality signal, indicating no viewable signal whatsoever, and disqualifying the station from mandatory carriage on the Cleveland system."⁶⁵

12. The Communications Act of 1934, as amended, (the Act)⁶⁶ provides that a cable operator is not required to carry a local commercial television station that does not deliver a good quality signal to the principal headend of a cable system.⁶⁷ With respect to the standard to be used to determine what constitutes a good quality signal, the Commission adopted a standard for determining the availability of VHF and UHF commercial stations at a cable system's headend. For VHF commercial television stations, the standard is -49 dBm, and for UHF commercial television stations, the standard is -45 dBm.⁶⁸ Generally, if the test results are less than -51 dBm for a UHF station, we have said that at least four readings must be taken over a two-hour period.⁶⁹ Where the initial readings are between -51 dBm and -45 dBm, inclusive, we believe that the readings should be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results.⁷⁰

13. Because the cable operator is in the best position to know whether a given low power television station is providing a good quality signal to the system's principal headend, the initial burden of demonstrating the lack of a good quality signal falls on the cable operator. In meeting this burden, the cable operator must show that it used good engineering practices to measure the signal delivered to the headend. To measure a station's signal to see if it meets the Commission's requirements, a cable operator's signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were done.⁷¹

14. Although Cable One makes a broad statement in their Clarification Letter that they oppose WPRQ-LD's signal carriage on their Cleveland headend because of poor signal quality, they fail

⁶⁴ 47 CFR § 76.55(d).

⁶⁵ Clarification Letter at 2.

⁶⁶ 47 U.S.C. § 534(h)(2)(D).

⁶⁷ 47 U.S.C. § 534(h)(1)(B)(iii)

⁶⁸ 47 CFR § 76.55 note to paragraph (d); *In re: Complaint of Maranatha Broadcasting Company, Inc. against Suburban Cable*, 12 FCC Rcd 22930 (1997).

⁶⁹ *Complaint of Maranatha Broadcasting*, 12 FCC Rcd at 22933, para 6.

⁷⁰ *Id.*

⁷¹ *Id.* at 22933, para 7.

to support this allegation in their presentation and analysis of the relevant signal test results.⁷² In our review, we note that in their first opposition, Cable One's signal test of WPRQ-LD in Cleveland failed to include the make and model of the equipment used, its age, and its most recent date of calibration. After obtaining a second chance to correct such deficiencies in their Clarification Letter, Cable One still failed to include the most recent date of calibration of the equipment used in its tests.⁷³ We also note that the antenna used by Cable One for WPRQ-LD's second signal test in Cleveland was a consumer grade "Mediasonic HOMEWORX HDTV Outdoor Antenna," as opposed to one of the VHF diamond quad array antennas installed on Cable One's Cleveland receive tower. When measured against our criteria, we conclude that the testing conducted by Cable One is insufficient to demonstrate that WPRQ-LD's signal is not of "good-quality" at its system headend. Accordingly, we provisionally grant WPRQ-LD's carriage complaint. However, because there is still a possibility that WPRQ-LD does not provide a good quality signal to Cable One's Cleveland headend and because a low power television station cannot use alternate means other than over-the-air delivery to provide a good quality signal, we provide Cable One with the opportunity to provide the Commission within 20 days of the release of this Order a definitive engineering study of WPRQ-LD's signal quality.⁷⁴ Such engineering study will be conducted in accordance with the good engineering practices discussed above. Further, Cable One shall provide WPRQ-LD with at least three business days' advance notice of the time and place of such signal quality testing and permit WPRQ-LD representatives to observe all phases of the testing if they so choose. If Cable One does not provide its engineering study to the Commission within twenty days, it shall commence carriage of WPRQ-LD on its Cleveland cable system within sixty days of the release date of this Order.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED**, that the petition filed March 28, 2017 by WPRQ-LD **IS PROVISIONALLY GRANTED** pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. §534), and Cable One **IS ORDERED** to commence carriage of Station WPRQ-LD within sixty (60) days of the release date of this order unless Cable One provides within twenty (20) days of the release date of this Order an engineering report that complies with Commission engineering standards that substantiates its claim of poor signal quality.

16. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

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

⁷² Clarification Letter Exhibit 1.

⁷³ *Id.*

⁷⁴ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2991 (1993); *Gary White v. City of Bardstown, KY*, 26 FCC Rcd 13090, 13096, para 16 (MB 2011) ("Low power television stations, unlike full-power television stations, are not entitled to improve their signal with additional equipment."); *WMTY, Inc. v. James Cable Partners*, 21 FCC Rcd 11709, para 3 (MB 2006) ("Unlike full power commercial television broadcast stations, LPTV stations . . . are not allowed by statute or the Commission's rules to cure a signal quality deficiency with additional equipment.")