

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

In re:

Complaint of Seeway  
Broadcasters  
against Continental Cablevision  
of Ohio, Inc

CSR-4213-M  
OH0030

Request for Carriage

**MEMORANDUM OPINION AND ORDER**

Adopted: February 3, 1995; Released: February 16, 1995

By the Cable Services Bureau:

**INTRODUCTION**

1. On January 31, 1994, Seeway Broadcasters ["Seeway"], licensee of low power television station W21BF (Channel 21), Fremont, Ohio, filed the captioned petition requesting mandatory carriage of its signal on the cable system operated by Continental Cablevision of Ohio, Inc. ["Continental"], serving Bellevue, Clyde, Green Creek Township, Green Springs, Vickery, York Township, and parts of Groton Township, Ohio. The petition was placed on public notice on February 25, 1994.<sup>1</sup> Continental opposed Seeway's complaint on March 17, 1994, and Seeway replied on March 22, 1994.

**SUMMARY OF PLEADINGS**

2. In support of its complaint, Seeway argues that it meets all of the applicable requirements for mandatory carriage of the station.<sup>2</sup> Seeway states that W21BF is a 24-hour-per-day low power television [LPTV] station, and that it adheres to the Commission's nonentertainment programming and employment requirements. Seeway states that it provides programming that addresses local news and informational needs which are not being adequately served by distant full power stations. Seeway further states that W21BF is located within 35 miles of Continental's principal headend, and that it complies with the Commission's rules governing interference. Seeway states that Fremont, W21BF's community of license, has a population of less than 35,000 and that Fremont is located outside of the 160 largest Metropolitan Statistical Areas. Seeway notes that there are no full power television stations licensed to the communities served by Continental's system. Seeway contends that it formally notified Continental that it was electing mandatory carriage on November 1, 1993, and that Continental never responded to the request.

3. In opposition to Seeway, Continental notes that one of the communities served by its system--Groton Township--is located within Erie County, as is the city of license of Station WGGN-TV (Ind., Channel 52), Sandusky, Ohio. Accordingly, Continental argues that there is a full power television broadcast station licensed within a county served by Continental's system. Continental also argues that W21BF's programming does not sufficiently address the local news and informational needs of Continental's subscribers. Continental maintains that its subscribers' informational needs are adequately served by full power broadcast stations that place Grade B contours over the system.<sup>3</sup> In addition, Continental asserts that its public access channel carries programming of local significance. Continental also argues that W21BF fails to satisfy its children's programming requirement. Finally, Continental asserts that the signal quality of W21BF is of borderline acceptability.

4. In reply, Seeway maintains that W21BF should not be disqualified for mandatory carriage because there is a full power station located in one county--Erie County--in which Continental serves only 27 subscribers, whereas Continental serves a majority of its subscribers in Huron, Sandusky, and Seneca Counties, and has its headend in Sandusky County. In addition, Seeway disputes Continental's contention that the informational needs of its subscribers are adequately served by full power stations "located approximately 35 miles from the communities the system serves," or by Continental's public access channel. Seeway states that W21BF provides local newscasts on weekdays providing several stories of interest pertaining to one or more of the communities served by Continental's system. Seeway reiterates that it provides children's programming as required by the Commission's Rules, and submits an affidavit to this effect from David Gorman, Executive Vice President and Director of Operations for MSTV, Inc., which provides children's programming to W21BF. Finally, Seeway notes that Continental provides no evidence of poor signal quality, despite Continental's claim that the station's signal is "borderline."

**DISCUSSION**

5. Both the Communications Act of 1934, as amended, and the Commission's rules requires the carriage of "qualified" LPTV stations in certain limited circumstances.<sup>4</sup> An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's Rules will be considered "qualified" only if: 1) it broadcasts for at least the minimum number of hours of operation required under 47 C.F.R. Part 73; 2) it adheres to Commission requirements regarding nonentertainment programming and employment practices and the Commission determines that the programming by the LPTV station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of 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

<sup>1</sup> *Cable Television Service Registrations Report No. 981* (released February 25, 1994).

<sup>2</sup> See 47 U.S.C. §534(h)(2).

<sup>3</sup> Continental submits a declaration from Gary J. Albers, Pro-

motion Director of Station WTOL-TV (CBS, Channel 11), Toledo, Ohio, asserting that the station broadcasts news stories of interest to Continental's subscribers.

<sup>4</sup> 47 U.S.C. §534(c)(1); 47 C.F.R. §76.56(b)(3).

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 are 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.<sup>5</sup>

6. We shall grant Seeway's petition. Continental's arguments are not persuasive. Continental concedes that it receives an adequate signal, however "borderline," from W21BF, and provides no engineering data to the contrary. Though Continental claims that Seeway has not presented evidence to demonstrate that it meets its children's programming responsibilities, Continental's undocumented assertion is not a sufficient rebuttal to Seeway's presentment that it complies with the children's programming requirements.<sup>6</sup> While Continental submits a declaration from the Promotion Director of WTOL-TV asserting that the station broadcasts news stories of interest to Continental's subscribers, referencing "one or more of the communities served by Continental's . . . system," as well as news stories of "regional" interest, this general assertion is not sufficient to warrant a finding by this Commission that W21BF is not meeting its local programming responsibilities.

7. Finally, Continental's argument that W21BF is not qualified for must-carry status throughout Continental's system because there is a full power television broadcast station licensed within a county served by one portion of Continental's system is not persuasive. The Commission specifically addressed this question in adopting the implementing rules for the mandatory signal carriage requirements of the Cable Television Consumer Protection and Competition Act of 1992 ["1992 Cable Act"].<sup>7</sup> In response to a suggestion from Comcast Corporation that the language in the 1992 Cable Act

should be interpreted to mean that where a cable system serves *any* community to which one or more full power stations are licensed, an LPTV station will not qualify for carriage on the system. Similarly, Section 614(h)(2)(E) refers to a single franchise area, but according to Comcast it should be interpreted to refer to all franchise areas served by a single system. We believe, contrary to Comcast's assertion, the correct interpretation is that, if a full power station is located in the same county or political subdivision (of a State) as an otherwise "qualified" LPTV station, the LPTV station will not be eligible for must-carry status.<sup>8</sup>

W21BF's city of license--Fremont, Ohio--is located in Sandusky County. No full power station is licensed to a community in Sandusky County, Ohio.<sup>9</sup> Accordingly, Seeway has demonstrated W21BF's right to mandatory carriage on Continental's system.

8. In view of the foregoing, we find that grant of Seeway's petition is in the public interest.

#### ORDER

9. Accordingly, IT IS ORDERED, That the complaint (CSR-4213-M) filed January 31, 1994 by Seeway Broadcasters against Continental Cablevision of Ohio, Inc. IS GRANTED, in accordance with §614(d)(3) of the Communications Act of 1934, as amended [47 U.S.C. §534(d)(3)].

10. IT IS FURTHER ORDERED, That Continental Cablevision of Ohio, Inc. SHALL COMMENCE CARRIAGE of the signal of W21BF forty-five (45) days from the release date of this *Order* on Continental's cable system serving Bellevue, Clyde, Green Creek Township, Green Springs, Groton Township, Vickery, and York Township, Ohio.

11. These actions are taken pursuant to authority delegated by §0.321 of the Commission's Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Service Bureau

<sup>5</sup> 47 U.S.C. §534(h)(2); 47 C.F.R. §76.55(d).

<sup>6</sup> In any event, we note that Seeway has submitted in its reply an affidavit from its supplier of children's programming.

<sup>7</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992). See *Report and Order* in *MM Docket No. 92-259*, 8 FCC Rcd 2965, 2983 n.211 (1993).

<sup>8</sup> *MM Docket No. 92-259*, *supra* (emphasis added).

<sup>9</sup> The only community served by Continental located within a county to which a full power television broadcast station is licensed is Groton Township in Erie County, in which the city of Sandusky, Ohio is situated, to which Station WGGN-TV is licensed.