

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

In re:)	
)	
Complaint of WMFP, Inc.)	CSR-4739-M
Licensee of Television Station WMFP)	
Lawrence, Massachusetts)	
)	
against)	
)	
Charter Communications, Inc.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: August 22, 1996

Released: September 5, 1996

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

INTRODUCTION

1. WMFP, Inc., licensee of television station WMFP, Channel 62, Lawrence, Massachusetts ("WMFP"), filed the above-captioned complaint requesting mandatory carriage of its signal on the cable television system operated by Charter Communications, Inc. ("Charter") in Uxbridge, Massachusetts. The complaint is unopposed.

BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,¹ commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.² An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which

¹ 8 FCC Rcd. 2965, 2972-74 (1993).

² Section 76.55(e) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.³

3. A commercial television station serving a community of license that is located within the same ADI as the principal headend of a cable system has a right of carriage on that cable system.⁴ However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of its activated channel capacity in order to comply with the mandatory signal carriage obligations;⁵ 2) the station is responsible for delivering a good quality signal to the principal headend of the system;⁶ 3) indemnification may be required for any increase in copyright liability resulting from carriage;⁷ and 4) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried or the signals of more than one local station affiliated with a particular broadcast network.⁸ If, pursuant to these requirements, a system operator elects to carry the signal of only a single affiliate of a broadcast network, it is obliged to carry the affiliate from within the market whose city of license is closest to the principal headend of the cable system.⁹

SUMMARY OF COMPLAINT

4. WMFP states that its city of license, Lawrence, Massachusetts, is located within the Boston ADI and it is therefore entitled to must carry status on all of the cable systems within the ADI pursuant to Sections 76.55(c)(e) and 76.56(b) of the Commission's rules.¹⁰ WMFP complains that while it formally has not been refused carriage by Charter, the system has nonetheless failed to put the station on its system despite requests to do so.

5. According to WMFP, Charter purchased the Uxbridge cable system from United Video Cablevision, Inc. ("United Video") in the latter part of 1995. Before this purchase, United Video

³ Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, see Arbitron's *Description of Methodology*.

⁴ See 47 U.S.C. § 534(h)(1)(A). See also 47 C.F.R. § 76.56(b).

⁵ See 47 U.S.C. § 534(b)(1)(B).

⁶ See 47 U.S.C. § 534(h)(1)(B)(iii).

⁷ See 47 U.S.C. § 534(h)(1)(B)(ii).

⁸ See 47 U.S.C. § 534(b)(5).

⁹ 8 FCC Rcd at 2981.

¹⁰ 47 C.F.R. §§76.55(c)(e) and 76.56(b).

agreed to permit WMFP to install equipment on its Uxbridge tower. WMFP states that on October 21, 1995, a letter was mailed to Dana Eno, Chief Engineer for United Video, formalizing the date and time when WMFP would install the equipment. The installation was completed on November 10, 1995, under Mr. Eno's supervision. WMFP states that a good quality picture was attained with a measured signal strength at the cable system's processor of -36.75 dBm. WMFP then states that it was later informed that the station would be carried on Channel 23. However, after November 10, 1995, WMFP states that it was told that Charter was awaiting delivery of a new processor. Later, WMFP was told that the request for the "Purchase Order" for the processor had not as yet been approved. WMFP was then informed by Charter that it required another letter requesting carriage on the Uxbridge system. WMFP mailed a letter requesting carriage on February 8, 1996 to the General Manager for Charter.

6. WMFP states that the February 8, 1996 letter was not answered and several telephone calls to the General Manager were not returned. WMFP notes that it mailed another letter to Charter on March 4, 1996. Meanwhile, on February 28, 1996, a letter was mailed to the station from Charter's Senior Counsel responding to the February 8 letter requesting carriage. The letter from Charter's Senior Counsel stated that she was requesting additional facts and that she would be in touch when she had researched the issues. WMFP notes that the letter did not identify the additional facts that the Senior Counsel was requesting and did not state when she would be in touch with the station.

DISCUSSION

7. From the information before us, it appears that WMFP is entitled to carriage on the cable system operated by Charter. WMFP has installed and paid all costs to deliver a good quality signal to the Uxbridge headend. Despite its efforts, Charter has declined to add the station to its system without giving any reason for its failure to do so. Charter has not demonstrated that WMFP's signal strength is inadequate, or that the carriage of the station would increase the system's copyright liability without the station agreeing to indemnify the system for such increased liability. Neither has the system indicated that the station's signal substantially duplicates the signal of another local commercial station which is carried on the system or that the system has already allocated up to one-third of the aggregate number of its usable activated channels to other local commercial stations.

ORDER

8. Accordingly, **IT IS ORDERED** that the petition (CSR-4739-M) filed on May 14, 1996, by WMFP, Inc. **IS GRANTED** pursuant to §614 of the Communications Act of 1934, as amended (47 U.S.C. §534), and Charter Communications, Inc. **IS ORDERED** to commence carriage of television station WMFP within sixty (60) days of the release date of this decision.

9. This action is taken pursuant to authority delegated under §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Gary M. Laden
Chief, Consumer Protection and Competition Division
Cable Services Bureau