

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

In the Matter of:)	
)	
McLaughlin Broadcasting, Inc.)	
)	
v.)	CSR 5177-M
)	
Comcast Cablevision of the South)	
)	
Request for Carriage of WQHB)	
Sumter, South Carolina)	

ORDER ON RECONSIDERATION

Adopted: March 23, 2000

Released: March 28, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Comcast Cablevision of the South (“Comcast”), operator of a cable television system serving Newberry and Prosperity, South Carolina, filed a Petition for Reconsideration requesting that the Cable Services Bureau’s *Order* (“*Bureau Order*”) granting must carry status to television broadcast station WQHB (“WQHB” or the “Station”) be reversed and modified.¹ Comcast wants the *Bureau Order* to conditionally grant WQHB mandatory carriage rights until the Station can provide a good quality signal to Comcast’s principal headend. McLaughlin Broadcasting, Inc. (“MBI”), licensee of station WQHB (Channel 63), Sumter, South Carolina, filed an opposition to the petition to which Comcast filed a reply.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, (“*Must Carry Order*”),² 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 “designated market area” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusively of

¹ *McLaughlin Broadcasting, Inc. v. Comcast Cablevision of the South*, (“McLaughlin Broadcasting”), 13 FCC Rcd 7330 (1998).

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ 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, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission’s rules provided Arbitron’s “Areas of

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive the preponderance of total viewing hours in the county. For purposes of this calculation, both the over-the-air and cable television viewing are included.⁴

III. DISCUSSION

3. In the initial filing of this proceeding, MBI filed a must carry complaint against Comcast for that cable operator's failure to carry WQHB on its system serving Newberry and Prosperity, South Carolina.⁵ In opposition, Comcast argued that MBI's complaint should be denied because WQHB did not deliver a sufficiently strong signal to the system headend. In reply, MBI argued that the signal measurement tests Comcast submitted fell well short of the Commission's rules for its definition of "sound engineering practices." In its decision, the Bureau concluded that Comcast "submitted signal strength studies which fail[ed] to show compliance with sound engineering practices" and were "insufficient to demonstrate that WQHB's signal is not of good quality."⁶ As a result, the Bureau found that WQHB is a qualified UHF station that is entitled to carriage on Comcast's cable system in question.

Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999)(*"Market Modification Final Report and Order"*).

⁴ For a more complete description of how counties are allocated, *see* Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵ *McLaughlin Broadcasting*, 13 FCC Rcd 7330 (1998).

⁶ *Id.*

4. Comcast argues that the Bureau erred when it ordered Comcast to start carrying WQHB on Comcast's Newberry headend and did not condition such carriage upon the Station delivering a good quality signal. Comcast maintains that the *Bureau Order* should be reversed because in granting mandatory carriage rights to WQHB, the Bureau stressed "minor technical deficiencies" in the signal strength tests Comcast submitted, while not adequately taking into consideration the fact that WQHB's signal was highly deficient.⁷ In support, Comcast submits the results of signal strength testing it conducted on May 11, 1998 at its Newberry, South Carolina headend, which purports to show not only that WQHB cannot provide a good quality signal, but that the signal is not perceptible at all at Comcast's principal headend.⁸ Comcast asserts that WQHB's own director of engineering, Gene Gibson, concedes that the Station's signal is deficient, and points out that WQHB has not made a commitment to provide Comcast with a signal of sufficient strength or quality.⁹

5. In opposition, WQHB maintains that its must carry Complaint was granted only after the Bureau found that it qualified for mandatory carriage when Comcast failed to meet its burden to show otherwise. WQHB asserts that the signal strength test results Comcast submitted in the earlier proceeding did not follow sound engineering practices, and showed deficiencies that cannot be considered minor, as Comcast claims.¹⁰ WQHB argues that Comcast's recent submission of new signal strength tests is a futile effort to remedy Comcast's earlier failure to meet its burden of proof to show that WQHB did not qualify for mandatory carriage rights. WQHB maintains that if its signal quality to Comcast's headend is inadequate, it will, at its own expense, provide the necessary equipment that might be required to deliver a good quality signal to Comcast's principal headend."¹¹

6. In its reply, Comcast reiterates its argument that WQHB should not be granted must carry status because the Station fails to deliver a good quality signal to Comcast's principal headend. Comcast maintains that the newly submitted signal strength test results "confirm that WQHB's signal is not even detectable" at the Newberry, South Carolina headend.¹² Comcast asserts that it submitted new signal strength test results "to remove any possible concern about the validity [of the earlier] testing procedures and the inadequacy of WQHB's signal."¹³ Comcast notes that WQHB does not dispute the calculations recently performed by WQHB's own director of engineering, Gene Gibson, which suggest a wholly inadequate signal.¹⁴ Furthermore, Comcast argues that even if WQHB is committed to providing an adequate signal to the Newberry headend, "it remains uncertain whether [the Station] can or will produce

⁷ Petition at 1.

⁸ Petition Exhibit 1.

⁹ Petition at 2.

¹⁰ Opposition at 2.

¹¹ *Id.* at 4.

¹² *Id.* at 1.

¹³ *Id.* at 2.

¹⁴ *Id.*

the required signal level” to qualify for must carry status.¹⁵ Comcast maintains that it is in the public interest to require WQHB to provide Comcast with a good quality signal. Finally, Comcast requests that the Bureau clarify its April 16, 1998 *Order* so that Comcast will not be required to carry WQHB until the Station provides a good quality signal to the Newberry headend.

7. The allegations previously raised by the parties and our discussion and analysis of the issues raised are fully addressed in the *Bureau Order* and need not be discussed here. The *Bureau Order* found that Comcast submitted signal strength studies that failed to show compliance with sound engineering practices. As a result, the Bureau concluded that WQHB was entitled to mandatory carriage because the tests were insufficient to demonstrate that WQHB’s signal is not of good quality. In this regard, the Commission has stated that cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.¹⁶ One method of doing so is for a cable operator to establish that a subject television station signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system’s principal headend.¹⁷ In the earlier proceeding, Comcast failed to meet that burden. As a result, the *Bureau Order* placed no conditions on the carriage of WQHB.¹⁸ In the instant proceeding, however, Comcast has submitted recent signal strength test results showing that WQHB does not deliver a good quality signal to Comcast.¹⁹ WQHB, however, has stated that it intends to provide specialized equipment that will improve its signal. As a result, we partially grant Comcast’s Petition for Reconsideration and modify the *Bureau Order*. Comcast is therefore ordered to begin carriage of station WQHB when it provides a good quality signal to Comcast’s Newberry headend.²⁰

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed by Comcast Cablevision of the South **IS PARTIALLY GRANTED**. Comcast Cablevision of the South **IS ORDERED** to commence carriage of television station WQHB on its cable system serving Newberry and Prosperity, South Carolina, within sixty (60) days from the date that station WQHB delivers a good

¹⁵ *Id.* at 3.

¹⁶ *See Must Carry Order* at 2990.

¹⁷ 47 C.F.R. § 76.55(c)(3).

¹⁸ The fact that the *Bureau Order* placed no conditions on the carriage of WQHB, does not, in any way, exempt the Station from its obligation to either deliver a good quality over-the-air signal, or to acquire and install, at the Station’s expense, any and all improvements and equipment that might be necessary to provide Comcast’s Newberry headend with a good quality signal.

¹⁹ WQHB has agreed to be responsible for installing all specialized equipment necessary to deliver a good quality signal to Comcast’s Newberry headend, serving Newberry and Prosperity, South Carolina. Opposition at 4.

²⁰ Under the Commission’s rules, a station’s failure to provide the requisite over-the-air signal quality to a cable system’s principal headend will not foreclose its carriage, if the station provides a cable operator with a specialized equipment, at the station’s expense, that will improve the station’s signal to an acceptable quality at a cable system’s principal headend. *Must Carry Order* at 2992. *See also* 47 U.S.C. § 534(h)(1)(b)(iii).

quality signal to Comcast's Newberry headend.

9. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.²¹

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

²¹ 47 C.F.R. § 0.321.