

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

In the Matter of:)	
)	
McLaughlin Broadcasting, Inc.)	
)	
v.)	CSR 5178-M
)	
Charter Communications II, LP)	
)	
Request for Carriage of WQHB)	
Sumter, South Carolina)	

ORDER ON RECONSIDERATION

Adopted: March 27, 2000

Released: March 30, 2000

By the Deputy Chief, Cable Services Bureau:

I. INTRODUCTION

1. Charter Communications II, LP (“Charter”), operator of a cable television system serving Camden, South Carolina, and surrounding areas, 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 Charter requests that the Bureau grant WQHB mandatory carriage conditioned on it providing a good quality signal to Charter’s principal headend. McLaughlin Broadcasting, Inc. (“MBI”), licensee of station WQHB (Channel 63), Sumter, South Carolina, filed an opposition to the petition to which Charter 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. Charter Communications II, LP* (“*McLaughlin Broadcasting*”), 13 FCC Rcd 7333 (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. §

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 its initial filing in this proceeding, MBI filed a must carry complaint against Charter for its failure to carry WQHB on its system serving Camden, South Carolina, and surrounding areas.⁵ In opposition, Charter 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 Charter submitted fell well short of the requirement that sound engineering practices be employed when conducting signal strength tests. In its decision, the Bureau concluded that Charter "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 entitled to carriage on the Charter cable system in question.

4. In the instant Petition, Charter maintains that the *Bureau Order* erred because the Bureau stressed "minor technical deficiencies" in the signal strength tests Charter submitted in the initial proceeding, while not adequately taking into consideration the fact that WQHB's signal was "clearly insufficient."⁷ In support, Charter submits the results of subsequent signal strength testing it conducted at its Camden, South Carolina headend, and argues that the tests show that WQHB's signal still is of insufficient strength. Charter notes that the test had a maximum level of -60.24 dBm.⁸ Charter notes that WQHB has not provided any assurances that it will provide a good quality signal as it is required, and points out that WQHB's director of engineering declined an invitation from Charter to conduct signal

534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided Arbitron's "Areas of 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* at 7333.

⁶ *Id.* at 7334-35

⁷ Petition at 1.

⁸ Section 76.55(c)(3), 47 C.F.R. § 75.55(c)(3), requires UHF signals to deliver a signal level of -45dBm to a cable system's principal headend. The required signal level for VHF signals is -49dBm.

tests at Charter's headend location.⁹

5. In opposition, WQHB maintains that the *Bureau Order* was not erroneous. It notes that the Bureau found that the tests Charter had submitted were based on unsound engineering practices.¹⁰ WQHB also asserts that tests Charter submitted in the earlier proceeding showed deficiencies that cannot be considered minor, as Charter now claims.¹¹ WQHB argues that Charter's recent submission of new signal strength tests is a futile effort to remedy Charter's earlier failure to meet its burden of proof and an attempt to introduce new facts on reconsideration. Finally, WQHB maintains that if its signal quality to Charter'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 Charter's principal headend.¹²

6. In its reply, Charter reiterates its argument that WQHB should not be granted must carry status because the Station fails to deliver a good quality signal to Charter's principal headend. Charter maintains that the newly submitted signal strength test shows that WQHB did not remotely approach the necessary signal threshold at the Camden, South Carolina headend.¹³ Charter 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.¹⁴ Charter maintains that it is in the public interest for the Commission to require WQHB to provide Charter with a good quality signal. Finally, Charter contends that the delay in carrying WQHB on the Camden system has been caused by the WQHB's inability to provide a good quality signal to the Camden 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 Charter 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 was 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.¹⁵ 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.¹⁶ In the earlier proceeding, Charter failed to meet that burden. As a result, the *Bureau Order* ordered the carriage

⁹ Petition at 2.

¹⁰ Opposition at 1.

¹¹ *Id.* at 2.

¹² *Id.* at 4.

¹³ *Id.* at 2.

¹⁴ *Id.* at 1.

¹⁵ *See Must Carry Order* at 2990.

¹⁶ 47 C.F.R. § 76.55(c)(3).

of WQHB.¹⁷ In the instant proceeding, however, Charter has submitted recent signal strength test results showing that WQHB does not deliver a good quality signal to Charter's Camden, South Carolina headend.¹⁸ WQHB, however, has stated that it intends to provide specialized equipment that will improve its signal. As a result, we partially grant Charter's Petition for Reconsideration and modify the *Bureau Order*. Charter is therefore ordered to begin carriage of station WQHB when it provides a good quality signal to Charter's Camden headend.¹⁹

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed by Charter Communications II, LP **IS PARTIALLY GRANTED**. Charter Communications II, LP **IS ORDERED** to commence carriage of television station WQHB on its cable system serving Camden, South Carolina, and surrounding areas, within sixty (60) days from the date that station WQHB delivers a good quality signal to Charter's Camden headend.

9. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

¹⁷ 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 Charter's Camden headend with a good quality signal.

¹⁸ WQHB has agreed to be responsible for installing all specialized equipment necessary to deliver a good quality signal to Charter's Camden headend. Opposition at 4.

¹⁹ 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).

²⁰ 47 C.F.R. § 0.321.