

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

In the Matter of:)	
)	
Bruno-Goodworth Network, Inc.)	
v. AT&T Broadband & Internet Services)	CSR-5501-M
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 2000

Released: May 18, 2000

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

I. INTRODUCTION

1. Bruno-Goodworth Network, Inc., licensee of low power station W66BQ (Ch. 66), Beaver, Pennsylvania ("W66BQ"), has filed a must carry complaint against AT&T Broadband & Internet Services ("AT&T"), for its failure to carry W66BQ on its Midland and Carnegie, Pennsylvania cable systems.¹ An opposition to this petition was filed on behalf of AT&T to which W66BQ has replied.

II. BACKGROUND

2. Section 614(a) of the Communications Act of 1934, as amended, requires the carriage of "qualified" low power television ("LPTV") stations in certain limited circumstances. Under Section 76.56(b)(3) of the Commission's rules, promulgated pursuant to Section 614, a cable system that has insufficient full power television stations to reach its channel set-aside shall carry at least one qualified LPTV station.² Thus, if a cable system is carrying its full complement of commercial full power stations, it need not carry an LPTV station. 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

¹AT&T's Midland system serves the communities of Brighton Township, Glasgow, Industry, Ohioville, and surrounding unincorporated areas of Beaver County, Pennsylvania. This system's headend is situated at Midland and the system communities are all located in Beaver County, Pennsylvania. The Carnegie system serves the communities of Aliquippa, Center Township, Hopewell Township, South Heights, Aleppo, Ambridge, Bell Acres, Conway, Economy, Edgeworth, Glenfield, and Harmony Township, Pennsylvania. This system's headend is situated at Carnegie and the system communities are all located in Allegheny County, Pennsylvania. We note that while W66BQ indicated in its complaint that the Allegheny County communities were originally served by a headend located in Pittsburgh, AT&T points out in its opposition that that headend was dismantled and was replaced by the headend at Carnegie.

²47 C.F.R. §76.56(b)(3).

Commission determines that the provision of such programming by the station would address local news and informational needs which 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 television station's community of license;"³ 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 headend and delivers to the principal headend an over-the-air signal of good quality;⁴ 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 ("MSAs") ranked by population, as determined by the Office of Management and Budget ("OMB") 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.⁵

III. DISCUSSION

3. In support of its request, W66BQ argues that AT&T's refusal to carry its signal is unwarranted because it meets all of the requirements of Section 76.55(d) of the Commission's rules to be a qualified LPTV station entitled to must carry. W66BQ states that it broadcasts 24 hours a day, 7 days a week and meets all of the obligations and requirements applicable to full power television stations. W66BQ also states that it is duly licensed pursuant to Part 74 of the Commission's rules and is in compliance with the Commission's interference rules. W66BQ submits that its transmitter is located within 35 miles of the principal headends of the cable systems. W66BQ also states that Beaver County, Pennsylvania, the geographic area of the cable systems, and Beaver, Pennsylvania, W66BQ's city of license, are located outside of the largest 160 MSAs, and there are no full power television stations licensed to any community in Beaver County.⁶

4. W66BQ states that it requested carriage on AT&T's systems by separate letters dated October 27, 1999.⁷ W66BQ notes that AT&T denied its requests on November 12, 1999, but gave no specific reasons for such denial.⁸ Because it continues to believe that it has must carry rights on AT&T's systems, W66BQ states that it had no choice but to file the instant complaint. W66BQ argues that it has made proper carriage requests for each of AT&T's systems and met the statutory and regulatory qualifications for carriage. Therefore, it concludes, the Commission should require AT&T to commence

³Section 76.55(d)(2) of the rules provides that the LPTV station must meet "all obligations and requirements applicable to full power television broadcast stations under Part 73 of Title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity . . ." 47 C.F.R. §76.55(d)(2).

⁴For purposes of this section, a good quality signal shall mean a signal level of -49 dBm for VHF signals and -45 dBm for UHF signals at the input terminals of the signal processing equipment, or a baseband video signal. 47 C.F.R. §76.55(d), Note to Paragraph.

⁵47 C.F.R. §76.55(d).

⁶W66BQ points out that according to 1990 MSA information from the U.S. Census Bureau's website, Beaver County is separate from the Pittsburgh MSA and is listed, according to the MSA rankings, as the 201st MSA in the nation. Complaint at Attachment 4.

⁷Complaint at 2.

⁸*Id.*

carriage of its signal.

5. In opposition, AT&T argues that it is not required to accommodate W66BQ because the station is not a “qualified” LPTV station. First, AT&T points out that W66BQ’s city of license is located within the 19th largest MSA (Pittsburgh). AT&T argues that the Commission’s rules require that the community of license of the station and the franchise area of the cable system both be located outside of the 160 largest MSAs. AT&T maintains that W66BQ misinterprets the 1990 MSA definitions it cites and that contrary to its suggestion, OMB’s ranking did not separately identify Primary Metropolitan Statistical Areas (“PMSAs”) like Beaver County which were encompassed by a larger Consolidated Metropolitan Statistical Area (“CMSA”) like Pittsburgh. Indeed, AT&T points out that the Bureau has previously rejected the identical argument in its decision in *WFXV-TV, Inc. v. United Cablevision of Southern Illinois, Inc., d/b/a TCI of Illinois*.⁹ Second, AT&T states that signal strength tests conducted at the Carnegie headend indicate that W66BQ does not provide a good quality signal to that cable system.¹⁰ Third, AT&T states that W66BQ has failed to meet its burden of proving that it consistently broadcasts local news and informational programming not addressed by other full power stations which the systems currently carry. Moreover, AT&T argues that W66BQ completely ignores the fact that its system currently carries several full power stations that provide at least Grade B coverage and several hours of news and informational programming on a weekly basis.¹¹ In light of the above, AT&T contends that W66BQ’s complaint should be dismissed.

6. W66BQ argues in reply that it does not believe that the Bureau’s decision in *WFXV-TV* is relevant to its complaint herein because the appeal of that decision is currently pending before the Commission. W66BQ maintains that a decision in the instant case should be held in abeyance until a decision on the *WFXV-TV* reconsideration is issued. In any event, W66BQ states that it continues to believe that the Beaver County PMSA is located outside of the largest 160 MSAs and that the Commission has no discretion under Section 614(h) of the rules to consider the PMSA or CMSA of a station or a cable system. Moreover, W66BQ maintains that AT&T’s signal measurements cannot be determinative since the tests apparently measured channel 50 instead of the W66BQ’s operation on channel 66.¹² At the very least, W66BQ states that the Commission should order joint tests of its signal at the Carnegie headend. Finally, W66BQ asserts that it gave specific examples of regular local programming which is targeted to the instant communities and covers local events and issues which are rarely, if ever, covered by full power stations licensed to the broader Pittsburgh market area. In contrast, W66BQ points out that AT&T failed to give specific examples of how the full power stations it carries provide programming of importance to the communities at issue. .

7. Contrary to W66BQ’s contention, we find that it is not a qualified LPTV station and deny its request. Section 76.55(d)(5) of the Commission’s rules requires that the community of license of the LPTV station and the franchise area of the cable system both be located outside of the largest 160 MSAs. In this instance, W66BQ’s city of license, Beaver, Pennsylvania, is located in the Beaver County PMSA, which is considered to be part of the Pittsburgh-Beaver Valley, Pennsylvania CMSA. A CMSA is defined by OMB as a “Level A” MSA in which two or more PMSAs have been identified. While OMB does have

⁹13 FCC Rcd 1870 (1997).

¹⁰Opposition at Exhibit 4.

¹¹*Id.* at 7.

¹²Reply at Attachment 1.

separate definitions for MSAs, PMSAs, and CMSAs, they are interrelated concepts. As a result, Beaver, Pennsylvania is considered to be located within the 160 largest MSAs and does not qualify for carriage on AT&T's Midland and Carnegie cable systems. In view of the above, we need not address the other issues raised with regard to W66BQ's qualifications.

8. Further, we see no reason to defer our decision herein until the Commission's action on the application for review for *WFXV-TV* is released. Section 1.106(n) of the Commission's rules states that "[w]ithout special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof."¹³ Not only are the parties herein not participants in the *WFXV-TV* proceeding, but Congress has mandated a 120-day period for processing must carry complaints. Must carry complaints which have been held in abeyance, generally due to negotiations between the parties, have been done so only by the consent of both parties in the proceeding. In this case, AT&T has not agreed to such an action.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. §534), that the complaint filed by Bruno-Goodworth Network, Inc. **IS DENIED**.

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker, Acting Chief
Consumer Protection and Competition Division
Cable Services Bureau

¹³47 C.F.R. §1.106(n).

¹⁴47 C.F.R. §0.321.