

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

In the Matter of:)	
)	
Educational Public TV Corporation)	
v.)	CSR-5830-M
RCN-BecoCom, LLC)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 13, 2002

Released: May 20, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Educational Public TV Corporation, licensee of noncommercial educational television station WYDN, Worcester, Massachusetts (“WYDN”), filed the above-captioned complaint against RCN-BecoCom, LLC (“RCN”) for its failure to carry WYDN on its cable system serving Boston, Massachusetts.¹ An opposition to this petition was filed on behalf of RCN to which WYDN replied.

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*”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² 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 exclusive of

¹Although WYDN is licensed as a noncommercial television station, it maintained in three previous proceedings that it should be treated as a “non-qualified” NCE station because it did not meet the qualification criteria established pursuant to Section 76.55(a) of the Commission’s rules. 47 C.F.R. §76.55(a). WYDN stated that it therefore sought carriage in those proceedings as a commercial station pursuant to Section 76.56(a) of the Commission’s rules. 47 C.F.R. §76.56(a). After the receipt of additional information, the Bureau accepted WYDN’s demonstration that it was a “non-qualified” NCE station. See *Frontiersvision Operating Partners, L.P., et al.*, DA 02-1169 (released May 20, 2002). Although no such statement has been made in WYDN’s complaint against RCN herein, we are treating WYDN as a commercial station for must carry purposes.

²8 FCC Rcd 2965, 1976-2977 (1993).

³Section 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). Section 76.55(e) of the Commission’s rules, 47 C.F.R. §76.55(e), requires that a commercial

(continued...)

others, based on measured viewing patterns.

III. DISCUSSION

3. In support of its complaint, WYDN states that it requested carriage on RCN's cable system by letter dated July 27, 2001.⁴ WYDN states that, in its request, it detailed the provisions it made for delivery of its signal via satellite to RCN's headend to ensure a good quality signal.⁵ WYDN indicates that it sent four follow-up messages and it was only after the fourth letter that it was informed by RCN that the matter had been referred to the cable system's counsel.⁶ WYDN states that RCN's counsel informed it, by letter dated December 12, 2001, that WYDN's current request for carriage was untimely and was being denied because WYDN had previously requested carriage in May 2000 and been denied when signal strength tests showed that WYDN was unable to provide a good quality signal.⁷ Although WYDN acknowledges that it did previously request carriage on the Boston cable system, it argues that this fact is irrelevant to the present proceeding because, in view of RCN's allegations as to poor signal quality, WYDN subsequently made arrangements to deliver its signal by alternative means.⁸ WYDN states that once it had arranged for satellite delivery, it renewed its request for carriage.⁹ WYDN therefore requests that the Commission order RCN to commence carriage of its signal.

4. In its opposition, RCN states that, as WYDN acknowledged in its complaint, WYDN originally requested carriage on RCN's cable system in May 2000 and this request was formally denied by RCN, by letter dated November 17, 2000, due to WYDN's inability to provide a good quality signal to the cable system's principal headend.¹⁰ Because RCN's November 17, 2000 letter constituted WYDN's formal denial of carriage, RCN argues that the applicable 60-day period in which WYDN could have filed a complaint with the Commission would have ended in mid-January 2001.¹¹ RCN states that a December 5, 2000 follow-up letter from RCN's counsel only confirmed the earlier denial from RCN's corporate headquarters.¹² RCN points out that WYDN failed to file its complaint within this 60-day period and, as a result, it waived its privilege for carriage on the Boston cable system. As a result of the 12-month delay between denial of carriage and the filing of the present complaint, RCN asserts that WYDN's complaint should be dismissed.

5. In reply, WYDN argues that RCN's contention that its current complaint is untimely because it was filed more than 60 days from RCN's November 17, 2000 denial of carriage is erroneous.

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broadcast television station's market be defined by Nielsen Media Research's 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) ("Modification Final Report and Order").

⁴Petition at Exhibit A.

⁵*Id.* at 2.

⁶*Id.* at Exhibits B and C.

⁷*Id.* at Exhibit D.

⁸*Id.* at 2.

⁹*Id.*, citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues, 8 FCC Rcd 4142, 4144 (1993) ("Clarification Order").

¹⁰Opposition at 1-2.

¹¹*Id.* at 2, citing *Clarification Order*, 8 FCC Rcd 4142 at n. 6.

¹²*Id.* at 2.

WYDN maintains that, at the time of its original request for carriage, there was a disagreement over the quality of the picture delivered to RCN's headend; a matter which was referenced in RCN's December 5, 2000 follow-up letter.¹³ WYDN states that the fact that RCN hired an engineering firm to undertake a study of its signal only underscores the fact of disagreement.¹⁴

6. We disagree with the arguments raised by WYDN and deny its request. Although WYDN relies on language in the *Clarification Order* that states that "broadcast stations may assert their carriage and channel positioning rights at any time, so long as they have not elected retransmission consent," such reliance is misplaced.¹⁵ Broadcast stations are entitled to demand carriage any time during an election period if they are not already being carried by a cable operator, such as RCN, that is located in the same DMA. WYDN did so in May 2000 and its request was formally and explicitly denied by RCN on November 17, 2000. Once its demand for carriage was rejected, it had 60 days to file a complaint. Because it did not do so, WYDN is not entitled to carriage under the mandatory carriage provisions on RCN's Boston cable system.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Educational Public TV Corporation **IS DENIED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534).

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

¹³Reply at 2.

¹⁴*Id.*

¹⁵*Clarification Order*, 8 FCC Rcd at 4144.

¹⁶47 C.F.R. §0.283.