

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

In the Matter of:)
Dominion Broadcasting Inc.)
v.) CSR-5834-M
Wolfe Broadcasting Corp. d/b/a Fremont)
Cablevision)
Request for Mandatory Carriage of)
Television Station WLMB-TV,)
Toledo, Ohio)

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 2002

Released: May 17, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Dominion Broadcasting, Inc. ("Dominion"), licensee of television broadcast station WLMB-TV, Channel 40, Toledo, Ohio ("WLMB" or the "Station"), filed the above-captioned must carry complaint against Wolfe Broadcasting Corp. d/b/a Fremont Cablevision ("Fremont"), for failing to carry WLMB on its cable system serving Fremont, Ohio (the "cable community"). No opposition to the petition was filed. For the reasons discussed below, we grant the complaint.

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. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 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). Section 76.55(e) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

III. DISCUSSION

3. In support of its complaint, WLMB states that it is licensed to Toledo, Ohio, which is in the Toledo, Ohio DMA. It states further that Fremont operates a cable television system in Fremont, Ohio, which is also in the Toledo, Ohio DMA. WLMB contends that because it is located within the same DMA as the Fremont cable system, it is entitled to mandatory carriage on that system. WLMB asserts that it sent a letter dated October 4, 2001, formally requesting that Fremont commence carriage of the Station's signal on its cable system.³ The letter also indicated that Fremont had previously informed WLMB that it did not provide a good quality signal to its headend as required by FCC Rules, Section 76.55(c)(3), and WLMB requested that Fremont provide the relevant testing information.⁴ Despite WLMB's request, Fremont never provided WLMB with a copy of the tests of WLMB's signal strength. Rather, On October 29, 2001, Fremont sent WLMB a letter explaining the signal strength tests and the equipment used to conduct them, but the letter did not address WLMB's request for carriage.⁵ WLMB sent Fremont another letter on November 6, 2001, regarding the signal test results, restating its conditional willingness to bear the cost of delivering a good quality signal to Fremont's headend, and presenting engineering options for the delivery of a good quality signal.⁶ WLMB's letter further stated that, in any event, pursuant to Section 76.55(c)(3), it would be responsible for the costs of delivering a "good quality signal" to Fremont's headend.⁷

4. WLMB claims that Fremont did not directly respond to its request for mandatory carriage in violation of Section 76.61(a)(2) of the Commission's rules, which requires cable operators to respond in writing to requests for carriage within 30 days of receipt of such requests.⁸ Although Fremont has not objected to WLMB's petition, correspondence between the parties indicates that both parties acknowledge that WLMB's signal may not provide a good quality signal to Fremont's headend. However, WLMB has agreed to bear the cost of providing Fremont with a good quality signal.⁹ Consequently, we will grant WLMB's request for carriage upon it providing a good quality signal at its headend.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the must carry complaint filed by Dominion Broadcasting Inc., licensee of television broadcast station WLMB, Toledo, Ohio against Wolfe Broadcasting Corp. d/b/a Fremont Cablevision **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that Fremont Cablevision **SHALL COMMENCE CARRIAGE** of the WLMB signal on its Fremont, Ohio cable system within sixty (60) days from the date

³ Complaint at 1 and Exhibit 2.

⁴ *Id.* at Exhibit 2.

⁵ *Id.* at 2 and Exhibit 3.

⁶ *Id.* at 2 and Exhibit 4.

⁷ *Id.*

⁸ *Id.* at 2. *See* 47 C.F.R. § 76.61(a)(2).

⁹ *Id.* at 2.

that WLMB provides a good quality signal to Fremont's headend.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁰

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

¹⁰ 47 C.F. R. § 0.283.