

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

In the Matter of:	)	
	)	
Reading Broadcasting, Inc. v.	)	
Armstrong Utilities, Inc.	)	CSR-5512-M
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 8, 2000**

**Released: June 12, 2000**

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

**I. INTRODUCTION**

1. Reading Broadcasting, Inc., licensee of Television Broadcast Station WTVE (Ch. 51), Reading, Pennsylvania (“WTVE”), filed the above-captioned complaint against Armstrong Utilities, Inc. (“Armstrong”), for its failure to carry WTVE on its system serving Oxford, Pennsylvania. An opposition to this petition was filed on behalf of Armstrong. No reply from WTVE was received.

**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.<sup>1</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>2</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

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<sup>1</sup>8 FCC Rcd 2965, 1976-2977 (1993).

<sup>2</sup>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 that 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) now 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)(“*Modification Final Report and Order*”).

### III. DISCUSSION

3. In the instant complaint, WTVE has claimed that it is entitled to carriage because both its city of license and the subject cable community are located within the Philadelphia DMA and because it has stated that it is willing to provide, at its own expense, any equipment necessary to ensure delivery of a good quality signal. In opposition, Armstrong has raised several issues, including the timeliness of the filing of WTVE's complaint, the fact that WTVE's complaint was improperly filed, and technical issues involving the inability of the cable system's headend tower to incorporate an additional antenna due to structural stress. WTVE did not respond to any of these allegations.

4. Upon review, we agree with Armstrong's assessment that WTVE's complaint was not timely filed pursuant to Section 76.61(a)(5) of the Commission's rules.<sup>3</sup> WTVE's October 1, 1999 letter is, in part, an election notification pursuant to Section 76.64(f) of the Commission's rules.<sup>4</sup> In addition, it clearly contains a request for carriage pursuant to Section 76.61(a)(1) of the rules.<sup>5</sup> Indeed, WTVE, in its own complaint characterizes its October 1, 1999 letter as a request for carriage. Armstrong properly responded to the October 1<sup>st</sup> request within the thirty days required pursuant to Section 76.61(a)(2) of the rules and denied WTVE's request for carriage.<sup>6</sup> Thereafter, WTVE had sixty days from the date of that denial within which to file its must carry complaint. In this instance, the 60-day period would have expired January 3, 2000, but WTVE did not file its complaint until February 7, 2000, more than a month later. While we note there was subsequent correspondence between WTVE and Armstrong regarding the installation of specialized equipment, there does not appear to be any aspect of negotiation between the parties. Indeed, Armstrong simply reiterates its denial of carriage in its only other letter to WTVE. In view of the foregoing, we find WTVE's complaint to be procedurally defective pursuant to Section 76.61(a)(5) of the rules and will be dismissed.<sup>7</sup> In view of our action herein, we need not address the others issues raised by the parties.

### IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition filed February 7, 2000, by Reading Broadcasting, Inc. **IS DISMISSED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534).

6. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>8</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>3</sup>47 C.F.R. §76.61(a)(5).

<sup>4</sup>47 C.F.R. §76.64(f).

<sup>5</sup>47 C.F.R. §76.61(a)(1).

<sup>6</sup>47 C.F.R. §76.61(a)(2).

<sup>7</sup>47 C.F.R. §76.61(a)(5).

<sup>8</sup>47 C.F.R. §0.321.