

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

In the Matter of:
Sonshine Family Television, Inc.
v.
Patriot Media and Communications CNJ, LLC
Request for Mandatory Carriage of
Television Station WBPH,
Bethlehem, Pennsylvania
CSR-6078-M

MEMORANDUM OPINION AND ORDER

Adopted: April 25, 2003

Released: April 30, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Sonshine Family Television, Inc. ("Sonshine"), licensee of television broadcast station WBPH (Ch. 60), Bethlehem, Pennsylvania ("WBPH") filed the above-captioned complaint for mandatory carriage against Patriot Media and Communications CNJ, LLC ("Patriot") for failing to carry WBPH on Patriot's cable system serving Princeton Borough and Princeton Township, New Jersey. Patriot filed an opposition to which Sonshine replied.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended ("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, such as WBPH, 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

1The petition was filed against RCN Corporation, former owner of the cable system in question. Counsel for RCN and Patriot have informed the Commission that the cable system was transferred from RCN to Patriot subsequent to the filing of pleadings in this matter, and that Patriot should be substituted as the named party in this proceeding.

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 base on viewing patterns. See 47 U.S.C. § 534(h)(1)(c).

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geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission's mandatory carriage rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television station, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's principal headend is -45 dBm.⁶ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁷

III. DISCUSSION

4. In support of its complaint, Sonshine states that WBPH is a full-power commercial television station licensed to Bethlehem, Pennsylvania, located in the Philadelphia, Pennsylvania DMA. Petitioner states further that Patriot operates a cable television system that is also located in the Philadelphia DMA. Sonshine asserts that on September 30, 2002, it formally notified Patriot of its mandatory carriage election and requested carriage on the system.⁸ Sonshine contends that Patriot did not respond to its demand for mandatory carriage within 30 days of receipt of such request as required by the Commission's rules,⁹ and requests that the Commission order Patriot to commence carriage of the station's signal on channel 60. Sonshine states that it will, if necessary, provide and install at its own expense the appropriate equipment to achieve a -45 dBm or better signal at the system's headend.¹⁰

5. Patriot argues that WBPH fails to deliver the required signal strength of -45 dBm at the system's principal headend and therefore cannot be considered as a qualified local commercial television station for mandatory carriage purposes.¹¹ In support, Patriot provides engineering data which indicates that the station does not currently provide the required signal strength at the system's principal headend.¹²

6. In reply, WBPH contests Patriot's engineering methodology and restates its intent to provide and install specialized equipment for receipt of the station's signal at the cable system's headend.

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

⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁷ See *Must Carry Order*, 8 FCC Rcd at 2991.

⁸ Petition at 1.

⁹ *Id.* at 2; see 47 C.F.R. § 76.61(a)(2).

¹⁰ Petition at 3; see 47 C.F.R. § 76.55(c)(3).

¹¹ Opposition at 3.

¹² *Id.*, Exhibit 1.

WBPH argues that the station has met its burden by committing to provide the equipment necessary for receipt of a good quality signal.

7. Section 76.55 of the Commission's rules provides that commercial television broadcast stations, such as WBPH, are entitled to carriage on cable systems located in the same DMA.¹³ As noted above, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.¹⁴ We find that Patriot has failed to meet this burden.

8. A review of WBPH's signal strength tests provided by Patriot indicates that all of the tests were conducted employing sound engineering practices and demonstrate that WBPH does not presently provide a good quality signal to Patriot's principal headend. We note, however, that WBPH has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet the signal strength criteria to provide, at their own expense, the equipment necessary for delivery of a good quality signal to a cable system's principal headend.¹⁵ WBPH has made this commitment and by doing so is eligible for mandatory carriage on Patriot's system serving Princeton Borough and Princeton Township, New Jersey when the station provides a signal which meets the Commission's signal strength criteria.

9. Finally, concerning Sonshine's channel positioning request, we find that petitioner has properly requested carriage on cable channel 60, WBPH's over-the-air broadcast channel. Pursuant to the Commission's rules, cable operators must comply with the channel positioning requirements absent a compelling technical reason.¹⁶

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the mandatory carriage complaint filed by Sonshine Family Television, Inc., licensee of television broadcast station WBPH, Bethlehem, Pennsylvania, against Patriot Media and Communications CNJ, LLC, **IS GRANTED**.

¹³ 47 C.F.R. § 76.55.

¹⁴ *See Must Carry Order*, 8 FCC Rcd at 2990.

¹⁵ 47 C.F.R. § 76.55(c)(3).

¹⁶ 47 C.F.R. § 76.57; *see Must Carry Order*, 8 FCC Rcd at 2988.

11. **IT IS FURTHER ORDERED** that Patriot **SHALL COMMENCE CARRIAGE** of WBPH's signal on channel 60 of Patriot's cable system serving Princeton Borough and Princeton Township, New Jersey within sixty (60) days from the date that WBPH delivers a good quality signal to the system's principal headend.

12. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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¹⁷ 47 C.F.R. § 0.283.