

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

In the Matter of:
Baraboo Broadcasting Corp.
v.
Charter Communications
Request for carriage of Station W43BR
Baraboo, Wisconsin
CSR-5849-M

MEMORANDUM OPINION AND ORDER

Adopted: July 2, 2002

Released: July 3, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Baraboo Broadcasting Corp. ("Baraboo"), licensee of low power television station ("LPTV") W43BR ("W43BR" or the "Station"), Baraboo, Wisconsin, filed a complaint pursuant to Section 76.61 of the Commission's rules, asserting mandatory carriage rights for W43BR on Charter Communications Inc.'s ("Charter") cable system serving Sauk City, Prairie du Sauk, Spring Green and Plain, Wisconsin ("cable communities").

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" LPTV stations in certain limited circumstances. An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's rules will be considered "qualified" if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming by the LPTV station addresses local news and informational needs that 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 station's community of license; (3) 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; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas 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

1 47 C.F.R. § 76.61.

2 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

within the county or other political subdivision (of a State) served by the cable system.³

III. DISCUSSION

3. W43BR states that it requested mandatory carriage on Charter's cable system serving the cable communities in a letter dated December 13, 2001.⁴ W43BR notes that Charter denied its mandatory carriage request on February 7, 2002 on the ground that the station failed to meet the requirements of Section 76.56(b)(4)(i), which states that a cable operator shall not carry an LPTV in lieu of a local commercial television station, and Section 76.55(d)(6), which states that an LPTV is qualified only if there is no full power television broadcast station licensed to any community served by the cable system.⁵ W43BR disagrees with Charter's interpretation of those two Sections and argues that there are no full power stations licensed to any community in Sauk County, in which both the Station and the cable communities are located.⁶ W43BR argues that it is eligible for carriage because it meets the requirements to be a qualified station.⁷ Specifically, W43BR asserts that it broadcasts a minimum of 18 hours per day.⁸ It also contends that it is within 35 miles of the cable system's principal headend and that it delivers a good quality signal to that headend via a fiber link.⁹ W43BR asserts further that it provides non-entertainment programming that serves the local needs of the cable communities, which are not met by any full power television station.¹⁰ Finally, W43BR states that its community of license and the cable communities in question are located outside the largest 160 Metropolitan Statistical Areas.¹¹ W43BR asks that the Commission order Charter to commence carriage of the Station on Charter's cable system serving the cable communities at issue.¹²

4. In opposition, Charters asserts that despite W43BR's claims to the contrary, the Station does not qualify as an LPTV for two reasons.¹³ First, because it fails to deliver a good quality signal to Charter's Mazomanie, Wisconsin headend, which serves the cable communities, and second, because W43BR failed to meet its burden to show that its programming addresses the local needs of the cable communities, which are not being met by full power television broadcast stations due to geographic distance from the LPTV's community of license.¹⁴ Charter states that the system in question already carries several full power stations that are located an average of only 29 miles from the cable communities and provide at least a Grade A contour over the cable communities.¹⁵ Charter states that it conducted a signal strength study which showed measurements below the -45 dBm threshold level

³ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

⁴ Complaint at 2.

⁵ *Id.*, 3 and Exhibit C.

⁶ Complaint at 4.

⁷ *Id.* at 2 and Exhibit D.

⁸ Exhibit D.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Complaint at 5.

¹³ Opposition at 3.

¹⁴ Charter states that W43BR also ignores the fact that the system in question carries several full power broadcast stations which adequately serve the local news and informational needs of the cable communities. *Id.* at 3-4.

¹⁵ *Id.* at 5.

required by the Commission's rules.¹⁶ According to Charter, the test conducted on April 3, 2002 resulted in the following readings: 12:00 p.m. -71 dBm; 12:30 p.m. -71 dBm; 1:00 p.m. -70 dBm; and 1:30 p.m. -72 dBm.¹⁷ Charter notes that although the Station is received via fiber optics at Charter's nearby stand-alone headend in Baraboo, Wisconsin, Charter is not required to transport W43BR's signal from that headend to its principal headend in Mazomanie in order for W43BR to meet its statutorily-mandated signal delivery responsibility.¹⁸ Charter also points out that unlike full power commercial television stations, LPTV stations cannot use additional specialized equipment to boost their signal strength.¹⁹ Charter therefore maintains that W43BR is not a "qualified" LPTV for mandatory carriage purposes and states that the Commission should dismiss or deny W43BR's complaint.²⁰

5. W43BR argues that the signal quality results Charter submitted are incomplete because testing was conducted for only a 90 minute period, rather than the two hour period required by the rules.²¹ W43BR argues that it should be allowed to deliver its signal to Charter's Mazomanie headend using fiber optics, by microwave or other means.²² In support, W43BR argues that a changed landscape since the Consumer Protection and Competition Act of 1992 was enacted makes delivery of a station's signal using alternative means not only desirable, but necessary.²³ W43BR contends further that because of clustering and consolidation of headends, the definition of a "principal headend" is no longer what it was in 1992.²⁴ The Station maintains that its President's Declaration attests that Q43BR provides more than the minimum amount of programming directed to the needs of children and that it has provided substantial coverage of news and other informational programming addressing the needs and interest of the cable communities.²⁵

6. We are not persuaded by the arguments raised by the Station. As noted above, Section 614(h)(2) of the Communications Act, as amended, and Section 76.55(d) of the Commission's rules, establish the requirements that LPTV stations must comply with to qualify for mandatory carriage on a cable system.²⁶ An LPTV station will be considered a "qualified" LPTV station for must carry purposes if it meets those requirements. Concerning an LPTV station's responsibility to meet those requirements, the Commission stated: "[o]nly if all of these requirements are met will an LPTV station be entitled to must-carry status."²⁷ One of those requirements is that the LPTV station provides a good quality over-the-air signal to a cable operator's principal headend.²⁸ In the instant case, we find that W43BR does not

¹⁶ *Id.* at 2-3.

¹⁷ Exhibit 2.

¹⁸ Opposition at 3.

¹⁹ *Id.*, n.7.

²⁰ *Id.* at 5.

²¹ Reply at 4.

²² *Id.* at 5.

²³ *Id.* at 3.

²⁴ *Id.*

²⁵ *Id.* at 4.

²⁶ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

²⁷ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues ("Must Carry Order")*, 8 FCC Rcd 2965, 2981.

²⁸ We reject W43BR's argument that Charter should have raised this issue at the time it denied the Station's must carry request and not in its Opposition to the instant complaint. Reply at 2. The Commission's rules do not require that issues be raised prior to the time a complaint is filed. See 47 C.F.R. § 76.61(a)(3)(ii).

meet that requirement. Staff review of the signal strength test results submitted by Charter establish that W43BR does not deliver a good quality over-the-air signal to the Charter headend at issue, as required by Section 614(h)(2)(D) of the Communications Act, as amended, and Section 76.55(d)(4) of the Commission's rules. We note further that the signal test results indicate that an additional 30 minutes of testing would not have made a difference in bringing the Station's signal strength into the acceptable tolerance range because the initial readings were not even marginally close to making the minimum threshold required by the Commission's rules.²⁹

7. W43BR also argues that it should be allowed to deliver its signal to a location other than Charter's principal headend, or in the alternative, to deliver the W43BR signal to Charter's Mazomanie headend using fiber optics, by microwave or other means. We disagree with this argument. Unlike full power commercial stations, LPTV stations, such as W43BR, are not allowed by statute or the Commission's rules to cure a signal quality deficiency with additional specialized equipment, nor is Charter required to transport W43BR's signal to its Mazomanie principal headend. Based on the foregoing, we find that W43BR is not a qualified LPTV station for mandatory carriage purposes.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the complaint filed by Baraboo Broadcasting Corp. **IS DENIED** pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534).

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁰

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

²⁹ See 47 C.F.R. § 76.55, Note to Paragraph (d).

³⁰ 47 C.F.R. § 0.283.