

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

In the Matter of:)	
)	
Sonshine Family Television, Inc.)	
v.)	CSR-6085-M
Comcast Corporation)	CSR-6086-M
)	CSR-6087-M
)	CSR-6090-M
Requests for Carriage)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 15, 2003

Released: May 23, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Sonshine Family Television, Inc., licensee of television broadcast station WBPH (Ch. 60), Bethlehem, Pennsylvania (“WBPH”) filed the above-captioned complaints against Comcast Corporation (“Comcast”) for its failure to carry WBPH on Comcast’s cable systems serving various communities located in the Philadelphia, Pennsylvania market (the “Comcast Communities”).¹ Comcast filed oppositions in each of the above-captioned matters to which WBPH replied. For the reasons discussed below, we grant the complaints.

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

¹The relevant cable systems and communities as are follows: CSR-6085-M – Comcast Cablevision of Lower Merion, Inc., serving Bala Cynwyd, Lower Merion Township, and Narberth Borough, Pennsylvania; CSR-6086-M – Comcast Cablevision of Willow Grove, Inc., serving Abingdon, Bryn Athlen, Cheltenham, Jenkintown, Lower Moreland, Rockledge, and Upper Moreland, Pennsylvania; CSR-6087-M – Comcast Cablevision of Philadelphia, Inc., serving Philadelphia, Pennsylvania; and CSR-6090-M – Comcast Cablevision of Levittown, Inc. and Cablevision of the South, Inc., serving Bristol, Bristol Township, Hulmeville, Langhorne, Langhorne Manor, Lower Makefield, Middletown, Penndel, and Yardley, Pennsylvania.

²8 FCC Rcd 2965, 2976-2977 (1993).

Research.³

3. Pursuant to the Commission's must carry 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 signal, 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 complaints, WBPH states that it is an authorized full-service UHF television station licensed to a community located within the Philadelphia, Pennsylvania DMA as are the Comcast Communities. WBPH indicates that by letter dated September 30, 2002, it elected must carry status on Comcast's cable systems, pursuant to Section 76.64(f) of the Commission's rules, beginning with the January 1, 2003 election period and, at the same time, requested carriage on Comcast's system, pursuant to Section 76.61(a) of the Commission's rules.⁸ WBPH states that, for three of the cable systems, Comcast never responded to these requests. For the Comcast Cablevision of Philadelphia cable system, however, Comcast denied carriage based on WFPH's poor signal quality. WBPH states that it accordingly filed the instant complaints within either 60 days of Comcast's failure to respond or Comcast's denial of carriage.⁹ WBPH requests that the Commission order Comcast to commence carriage of its station's signal on the subject cable systems. WBPH 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 systems' headends.¹⁰

5. Comcast argues in all four contested matters that WBPH fails to deliver the required signal strength of -45 dBm at the systems' principal headends and that the systems are therefore not obligated to carry the station's signal.¹¹ In support, Comcast provides engineering data which confirms

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

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

⁵47 C.F.R. § 76.55(c)(3).

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

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

⁸Complaints at Exhibit A; *see also* 47 C.F.R. §§ 76.64(f) and 76.61(a).

⁹Complaints at 2.

¹⁰Replies at 3, 4 and 5.

¹¹Oppositions at 2.

that the station does not currently provide the required signal strength at the systems' principal headends.¹² In reply, WBPH contests Comcast's engineering methodology and restates its intent to provide and install specialized equipment for receipt of the station at the cable systems' headends. WBPH argues that it has met its burden by committing to provide the equipment necessary for receipt of a good quality signal.¹³

6. 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.¹⁴ 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.¹⁵ A review of WBPH's signal strength tests provided by Comcast in the four contested matters indicate that all of the tests were conducted employing sound engineering practices and demonstrate that WBPH does not presently provide a good quality signal to Comcast's principal headends. 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 at a cable system's principal headend.¹⁶ WBPH has made this commitment and by doing so is eligible for mandatory carriage on Comcast's cable systems when the station provides a signal which meets the Commission's signal strength criteria.

7. We note that Comcast has raised the issue of whether it may require WBPH to enter into a lease agreement with a third party for the installation of reception equipment necessary for the delivery of a good quality signal at the relevant principal headends.¹⁷ We agree with WBPH that the Commission has repeatedly ruled that cable operators cannot require stations seeking must carry status to pay rent for antenna space.¹⁸

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petitions filed by Sonshine Family Television, Inc. **ARE GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534. Comcast Corporation **IS ORDERED** to commence carriage of WBPH on its cable systems serving the Comcast Communities specified in CSR-6085-M, CSR-6086-M, CSR-6087-M and CSR-6090-M within sixty (60) days from the date on which WBPH delivers a good quality signal to the cable systems' principal headends.

¹²*Id.* at Exhibit 1.

¹³Replies at 3, 4 and 5.

¹⁴47 C.F.R. § 76.55(c)(3).

¹⁵*See Must Carry Order*, 8 FCC Rcd at 2990.

¹⁶47 C.F.R. § 76.55(c)(3).

¹⁷Oppositions at 2.

¹⁸*Id.* at 4, citing *Sonshine Family Television, Inc. v. Suburban Cable TV*, 14 FCC Rcd 15391, 15395 (1999); *Suburban Cable TV Co., Inc. and Lenfest Atlantic, Inc.*, 16 FCC Rcd 10790, 10797 (2001).

9. **IT IS FURTHER ORDERED** that WBPH shall notify Comcast of its channel position elections thirty (30) days from the date it delivers a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹⁹

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

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¹⁹47 C.F.R. §§ 76.57 and 76.64(f).

²⁰47 C.F.R. § 0.283.