

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

In the Matter of:)
Ellington Broadcasting, WHCQ-LD)
v.) CSR-8932-M
Ultra Communications Group, LLC, d/b/a) Docket No. 17-2
NewWave Communications)

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2017

Released: March 16, 2017

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Ellington Broadcasting, licensee of Low Power Television Station WHCQ-LD, Cleveland, Mississippi ("WHCQ-LD), has filed the above-captioned complaint against Ultra Communications Group, LLC, d/b/a NewWave Communications ("NewWave") for its refusal to carry WHCQ-LD on its cable system serving Leland, Mississippi.1 NewWave filed an opposition to the complaint, to which WHCQ-LD filed a reply.2 For the reasons discussed below, we deny the complaint.

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" low power television ("LPTV") stations in certain limited circumstances.3 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 of 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) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system's principal headend and delivers to the 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

1 Ellington Broadcasting Complaint filed December 28, 2016 ("Complaint").

2 Opposition of Ultra Communications Group, LLC, d/b/a NewWave Communications filed January 24, 2017 (Opposition); Reply of WHCQ-LD, filed February 10, 2017 ("Reply").

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

community within the county or other political subdivision (of a State) served by the cable system.⁴

III. DISCUSSION

3. We begin by noting that the Commission does not have the authority to waive the rules that have been statutorily promulgated by Congress with respect to what factors define a “qualified” low power station.⁵ The Commission must enforce the statute as drafted.⁶ As outlined above, Congress has identified six factors that determine whether a low power station is “qualified” and therefore entitled to mandatory carriage rights.⁷ Because a low power television station must meet each of the six criteria required by the Act and the Commission’s rules, its failure to meet just one is fatal to its request for mandatory carriage.⁸

4. In its complaint, WHCQ-LD claims that it is a qualified LPTV station, and seeks mandatory carriage on NewWave’s Leland cable system.⁹ WHCQ-LD states that it filed a formal request for cable carriage with NewWave on September 28, 2016.¹⁰ However, NewWave did not reply to WHCQ-LD’s carriage request.¹¹ WHCQ-LD states that its carriage demand letter to NewWave established that it met all six requirements as required under the Communication’s Act for mandatory carriage.¹²

5. In opposition, NewWave states that its cable system serves Washington County, Mississippi.¹³ NewWave argues that WHCQ-LD is not a qualified low power television station for must carry purposes because WXVT, Greenville, Mississippi, is a full power television broadcast station that is licensed to a community within Washington County and is affiliated with the Columbia Broadcasting System.¹⁴ NewWave also asserts that WHCQ-LD has failed to demonstrate that its programming is providing “important news and local information” that is not adequately served by full power television stations.¹⁵ Finally, NewWave asserts that WHCQ-LD fails to provide a good quality signal to its headend.¹⁶ According to NewWave, it conducted a signal strength test of the station’s signal on January 5, 2017, and the test reflected that WHCQ-LD did not deliver a good quality signal because the signal

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

⁵ See 47 U.S.C. § 534(h)(2)(A)-(F).

⁶ See *Continental Broad. Corp. v. Jones Intercable, Inc.*, 9 FCC Rcd. 2550, 2551, ¶ 8 (CSB May 18, 1994).

⁷ See 47 U.S.C. § 534(h)(2)(A)-(F) & 47 C.F.R. § 76.55(d)(1)-(6).

⁸ See *Continental Broad. Corp.*, 9 FCC Rcd. at 2551, ¶ 7.

⁹ Complaint at 1.

¹⁰ *Id.*, Attachment 2. WHCQ-LD’s letter also states that its initial formal carriage demand letter (“letter”) was sent to NewWave’s Leland, Mississippi office on September 26, 2016, by first class certified mail. However, that letter was returned. On September 28, 2016, WHCQ-LD resent its letter to NewWave’s Sikeston, Missouri Office by first class certified mail, which was delivered on October 3, 2016.

¹¹ Complaint at 1.

¹² *Id.*, Attachment 2.

¹³ Opposition at 2.

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* 6-7.

strength reading was only -40 dBm, which is well under the requirements for a good quality signal.¹⁷

6. In reply, WHCQ-LD argues that it has satisfied the six requirements for low power television carriage because the issues raised by NewWave are easily rebuttable. WHCQ-LD asserts that WXVT is silent and is no longer on the air.¹⁸

7. We find that WHCQ-LD is not a “qualified” low power television station. Section 76.55(d)(6) of our rules directly implements the mandate of Section 614(h)(2)(F)¹⁹ of the Cable Act, pursuant to which a low power station can only qualify for mandatory carriage if there is no full power television station licensed to a community within its county or other political subdivision. WXVT is currently licensed to Greenville, Mississippi located within Washington County. WXVT is currently licensed but silent pursuant to a grant of Special Temporary Authority (“STA”).²⁰ WXVT’s initial STA has expired. However, it has submitted a request for an extension of the STA, which is pending before the Commission. Thus, for purposes of analyzing the six criteria required by the Act and the Commission’s rules, there is a full power television station that is currently licensed to a community within Washington County.²¹ As a result, WHCQ-LD has failed to establish that there is no full power television station licensed to Washington County, Mississippi. WHCQ-LD’s failure to meet this factor is fatal to its request for mandatory carriage.²²

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.55(d) of the Commission’s rules, that the must carry complaint filed by Ellington Broadcasting, on behalf of Low Power Station WHCQ-LD, Cleveland, Mississippi **IS DENIED**.

9. This action is taken pursuant to authority delegated by Section. 0.283 of the Commission’s rules.²³

FEDERAL COMMUNICATIONS COMMISSION

¹⁷ *Id.*

¹⁸ Reply at 2.

¹⁹ 47 U.S.C. § 534(h)(2).

²⁰ Letter from Kevin R. Harding, Associate Chief, Video Division, FCC Media Bureau, to John Wagner (Vid. Div. Aug. 12, 2016) (1800E1-MHH).

²¹ Although WXVT remains licensed and silent under our rules, our rules also state that a broadcasting station’s license will expire as a matter of law if it fails to broadcast for any consecutive 12-month period. *See* 47 C.F.R. § 73.1740(c). Thus, WHCQ-LD is free to resubmit a petition for carriage if WXVT does not resume broadcasting later this year.

²² *See Bellizzi Broadcasting Network, Inc. Station WEYP-LP, Key West, Florida*, 30 FCC Rcd 13972, ¶ 4 (2015); *Continental Broad Corp. v. Jones Intercable, Inc.*, 9 FCC Rcd 2550, 2551 ¶ 7 (CSB 1994).

²³ 47 C.F.R. § 0.283.

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