

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

In re:

Complaint of CTV of Derry, Inc.  
against Cablevision of Boston

CSR-4612-M  
MA0182

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: February 6, 1996; Released: February 15, 1996

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. CTV of Derry, Inc., licensee of Television Broadcast Station WNDS (Channel 50), Derry, New Hampshire, has requested that the Commission order Cablevision of Boston ("Cablevision") to commence carriage of WNDS on its cable system serving Boston, Massachusetts, pursuant to §§76.7 and 76.61 of the Commission's Rules. Specifically, WNDS requests that the Commission instruct Cablevision "... to permit WNDS to install receiving equipment, including amplification, that will permit WNDS to meet the technical criteria set forth in the Cable Television Consumer Protection and Competition Act of 1992." Cablevision of Boston Limited Partnership d/b/a Cablevision has filed an opposition to this complaint, to which WNDS has replied.

PARTIES' ARGUMENTS

2. According to WNDS, on November 14, 1994, its Chief Engineer, Paul Hunter, and its consultant, John A. Fergie, P.E., met with Frank Vogelle, Cablevision's Chief Engineer, to measure WNDS' signal, which they found to be less than -45 dBm when an amplifier was mounted between the output of the antenna utilized and the input of the transmission line. Thereafter, WNDS received a letter from Cablevision dated January 23, 1995,<sup>1</sup> containing new tests which Cablevision said showed that WNDS did not meet FCC standards for an acceptable signal by a significant margin and stating that the test on November 14 had not been conducted in accordance with Commission procedures. Since this letter failed to specify how the prior test had not been conducted in accordance with Commission procedures, WNDS responded by sending Cablevision a letter dated July 3, 1995, asking that it provide such an

explanation. According to WNDS, Cablevision never responded to this letter, and on July 28, 1995, WNDS sent it another letter repeating its previous request. Thereafter, Cablevision sent WNDS a letter dated August 31, 1995, in which it stated that "... the signal must meet specifications at the input of the first active piece of equipment. Therefore, requiring an amplifier indicates it does not meet specifications at the first active piece of equipment." Cablevision concluded that WNDS' signal "does not qualify" for must carry and added that "... amplification, while enabling the signal to meet specification, also increases noise which we do not want ..." Cablevision noted that WNDS had not responded to its letter of January 23, 1995, until July 28, 1995, well after the specified sixty day period had expired. Thereafter, WNDS sent Cablevision a letter dated September 7, 1995, in which it stated that, unless the issue of its carriage was resolved, it planned to file a formal complaint with the Commission no later than October 30, 1995, and it reminded Cablevision that broadcasters are entitled to provide "... improved antennas, increased tower height, microwave relay equipment, *amplification equipment*, and tests that may be needed etc."<sup>2</sup> whereupon the signal must meet specifications at the input of the first active piece of equipment, meaning "... the first active piece of *your signal processing equipment*."

3. In response, Cablevision states that WNDS' complaint should be dismissed, pursuant to §76.61 of the Commission's Rules, because it was filed seven months after the system sent the station a letter, dated January 23, 1995, that constituted an affirmative written denial of WNDS' telephone carriage request in October of 1994.<sup>3</sup> In its letter dated August 31, 1995, Cablevision repeated its belief that WNDS' signal lacked sufficient quality to be a must-carry station and stated that Commission rules require that stations take their measurements at the input to the first active piece of a system's receiving equipment, not at the output of a preamplifier. Cablevision adds that it measured WNDS' signal on three different occasions during the past thirteen months at its principal headend at West Roxbury. All of these readings reportedly showed a signal level of less than -45dBm, without the use of a preamplifier, which is below the signal level required for a UHF station such as WNDS to have must-carry rights. Cablevision maintains that WNDS' attempts to boost its signal to an acceptable strength by placing preamplification equipment between the system's antenna and its transmission line will amplify surrounding noise and result in material degradation of picture quality, which violates sound engineering practices. Cablevision asserts, therefore, that WNDS' preamplification proposal must be rejected and that its signal strength measurements must be made in front of any pre-amplification equipment, not directly behind the pre-amplifier, as WNDS' Chief Engineer, Paul Hunter, did during the tests made on November 16, 1994. According to Cablevision, the proper way to boost the reception of a weak signal is to

<sup>1</sup> In addition, sometime prior to January 23, 1995, WNDS' General Manager, Donna Cole, was contacted by Cablevision's General Manager, Henry Ferris, who said that the system would add the station if WNDS paid the system a copyright fee of \$166,000, which WNDS declined to do for lack of funds. According to Mrs. Cole's affidavit, Mr. Ferris said at that time that

the station's "... signal was not perfect, but it was acceptable."

<sup>2</sup> See, *Report and Order* in MM Dockets No. 92-259, 90-4 and 92-295, 8 FCC Rcd 2965, 2991 (1993).

<sup>3</sup> Alternatively, Cablevision states that WNDS had to file its Complaint no later than January 29, 1995, pursuant to §76.61, if as stated in Frank Vogelle's "Declaration" the station requested carriage in October 1994, and the system failed to respond in a timely fashion.

increase antenna gain; Cablevision maintains, therefore, that WNDS' pre-amplification proposal must be rejected and its complaint must be denied.

4. In reply, WNDS maintains that the event upon which it based its complaint was the system's letter dated August 31, 1995, rejecting the station's request to utilize a preamplifier at the system's headend. According to WNDS, Cablevision's letter of January 23, 1995, did not constitute an affirmative action triggering the Commission's sixty day filing period, pursuant to §76.7(c)(4)(iii) of the Commission's Rules, since it only contained an offer to make additional tests and alerted the station to a disagreement with the system concerning WNDS' signal measurement methodology.<sup>4</sup> In addition, WNDS argues that if the quality of the signal emanating from station-provided amplification equipment is to be ignored in determining whether or not the signal meets the Commission's minimum UHF threshold of -45 dBm and is, therefore, entitled to mandatory carriage by cable systems in its ADI, ". . . then it would make no sense for the Commission to specifically note, as it has in its *Report and Order*, that a station may use such equipment to provide a good quality signal. 8 FCC Red at 2991." Finally, WNDS submits a Declaration from John A. Fergie, the station's engineering consultant, in which he states that when WNDS' signal was measured at Cablevision's headend on November 14, 1994, ". . . its picture was found to have a good signal-to-noise ratio with no multipath or other impairment." WNDS, therefore, repeats its assertion that it is entitled to carriage by Cablevision either ". . . within 45 days of the release of the Commission's Order or 45 days after CTV has installed at Cablevision's headend the necessary equipment for adequate reception of the WNDS signal, whichever is later."

#### DISCUSSION

5. Cablevision maintains that WNDS failed to file a complaint within the mandated 60 day period after being informed by Cablevision that it would not carry the station, and consequently that its complaint should be dismissed, pursuant to §76.7 (c)(4)(iii) of the Commission's Rules. Cablevision premises this argument on the allegation that its letter of January 23, 1995 constituted a refusal of carriage. Based upon our reading of the January 23, 1995, letter we cannot conclude that it amounted to a refusal of carriage.<sup>5</sup> Rather we believe that Cablevision's August 31, 1995, letter was the first time that it informed WNDS that its signal would not be carried on Cablevision's system.<sup>6</sup> Prior to that date, the parties had several communications between themselves about the propriety of employing a

preamplifier, as well as signal quality measurement issues concerning WNDS's signal. Consequently, we will not dismiss WNDS's complaint as untimely filed.

6. With regard to the use of a preamplifier by WNDS, we note that when the Commission adopted its *Report and Order*, it stated that where a signal fails to meet Commission standards, it did not expect the cable operator to bear the burden of improving the signal if the problem resulted from an unsatisfactory local television signal, but it expected the cable operator to cooperate with the television station in resolving the problem:

it is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend. This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements, especially if the cable system's over-the-air reception equipment is already in place and is operating properly.

(footnote omitted.)<sup>7</sup> Clearly this passage finds that where a station has been responsible for the costs of attempting to improve its signal at the cable system's headend, we do not expect the station thereafter to make its signal level measurements before the signal goes through any new equipment supplied by the station (such as a preamplifier). Therefore, WNDS may make its signal tests at the output of any equipment that it supplies the system. Should WNDS' signal still lack sufficient quality or exhibit excessive noise, then the station may need to acquire additional equipment, such as an improved antenna, and take additional signal measurements at the output of this equipment until such time as the station does provide a good quality signal at the system's headend. We note that such equipment may be particularly useful where a station does not provide a good quality signal, for instance because of injected noise, to a system's headend, despite the presence of a preamplifier. Because Cablevision has not permitted the use of a preamplifier, however, we are unable to conclude that such is the case in this instance.

7. With regard to the methodology to be employed to determine whether a good quality signal is delivered to a cable systems headend, §614(h)(1)(B)(iii) of the Communications Act of 1934, as amended, specifically excludes from the definition of "local commercial station" any UHF station which does not provide a minimum signal level, of -45 dBm at the cable system's principal headend and ". . . which does not agree to be responsible for the costs of delivering to the cable system a signal of good quality" or a

<sup>4</sup> The content of the letter dated January 23, 1995, from Mr. Henry J. Ferris of Cablevision to WNDS' General Manager, Ms. Donna Cole, follows:

We have reviewed the testing which was performed in November on WNDS' signal with our Corporate Engineering Group and have concluded that this test was not conducted in accordance with FCC procedures. Attached are the results of a subsequent test in which your station failed to meet FCC standards for an acceptable signal by a significant margin.

Please contact us in writing if you would like to conduct an engineering study. Any costs associated with such study as well as those equipment and labor costs required to implement the necessary engineering solutions will be your responsibility.

<sup>5</sup> See footnote 4, *supra*.

<sup>6</sup> The last line of that letter says "[t]herefore, it is our view that WNDS's signal does not qualify for must carry."

<sup>7</sup> 8 FCC Red at 2991.

baseband video signal." In this instance, however, the data submitted by Cablevision is not sufficient to demonstrate that WNDS would not deliver a good signal to Cablevision's headend if a preamplifier supplied by WNDS were used. In this case, Cablevision has not permitted measurements to be made after a preamplifier supplied by WNDS. Further, in making the required measurements Cablevision should follow acceptable engineering practices, which mandate that in cases where test results are less than -51 dBm for a UHF station, there must be four readings taken over a two-hour period,<sup>8</sup> and that these tests must contain certain detailed information including the time of day and weather conditions when the data were collected, as well as the most recent date of calibration of the test equipment used.<sup>9</sup> In addition, test data should include the height of the antenna, together with the height of other UHF antennas currently in place, and any additional testing is to be done in the presence of a representative from WNDS. Finally, Cablevision should conduct its testing in accordance with the established principles of good engineering practices,<sup>10</sup> and any data submitted should be clear and concise.

#### ORDERING CLAUSES

8. In view of the foregoing, we find that Cablevision has failed to adequately demonstrate WNDS' poor signal quality at Cablevision's designated headend.

9. Accordingly, the request filed October 25, 1995, by Television Broadcast Station WNDS (Ind., Channel 50), Derry New Hampshire, IS GRANTED pursuant to §614(d)(3) of the Communications Act of 1934, as amended (47 U. S. C. §534), and Cablevision of Boston Limited Partnership d/b/a/Cablevision IS ORDERED to commence carriage of WNDS on its cable system serving Boston, Massachusetts, sixty (60) days from the release date of this *Order*, unless Cablevision submits the engineering data required herein to support its assertion of inadequate signal quality from WNDS at Cablevision's principal headend within fifteen (15) days of the release date of this *Order*.

10. This action is taken pursuant to §0.321 of the Commission's Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

<sup>8</sup> See, *Complaint of Rural California Broadcasting Corp. against Western Cabled Systems*, 10 FCC Rcd 2743 (1995).

<sup>9</sup> In addition to that noted above, data should also include the following information: the specific make, model numbers, and date of last calibration of the test equipment used; the height of the antenna above ground level, whether or not the antenna was properly oriented, and the make and model number of any antenna used; description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; and the weather conditions and the time of day when the tests were performed.

<sup>10</sup> The reference in §614(h)(1)(B)(iii) of the Communications Act of 1934, as amended (47 U. S. C. §534) to measuring broadcast signals at the ". . . input terminals of the signal processing equipment . . ." simply means that signal level measurements should be taken at the first active device or input terminals of the signal processing equipment owned by the cable system, which would be after the equipment supplied by a television station.