

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

In the Matter of )  
)  
Complaint of WMFP, Inc. ) CSR-4795-M  
against The Americable Group )  
)  
Request for Carriage )

MEMORANDUM OPINION AND ORDER

Adopted: December 3, 1996

Released: December 9, 1996

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

INTRODUCTION

1. WMFP, Inc., licensee of Television Broadcast Station WMFP (Channel 62), Lawrence, Massachusetts, filed a must carry complaint requesting that the Commission order The Americable Group ("Americable") to commence carriage of WMFP on its Merrimack, New Hampshire cable system pursuant to §§76.7 and 76.61 of the Commission's Rules.<sup>1</sup> An opposition to this petition was filed on behalf of Americable.

ARGUMENTS

2. In support of its request, WMFP states that its city of license, Lawrence, Massachusetts, is located within the Boston ADI and it is therefore entitled to must carry status on all of the cable systems within the ADI pursuant to §§76.55(c)(e) and 76.56(b) of the Commission's Rules.<sup>2</sup> WMFP complains that while it formally has not been refused carriage by Americable, the system has nonetheless failed to put the station on its system despite requests to do so.

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<sup>1</sup>We note that the constitutionality of the 1992 Cable Act's must carry provisions and the Commission's implementing rules were initially upheld by the U.S. District Court for the District of Columbia. The U.S. Supreme Court subsequently reviewed the lower court's decision and then vacated and remanded the case to the District Court for further fact-finding. See *Turner Broadcasting System, Inc., et al. v. Federal Communications Commission*, 819 F. Supp. 32 (D.D.C. 1993), *vacated and remanded*, 114 S. Ct. 2445 (1994), *on remand*, 910 F. Supp. 734 (D.D.C. 1995). The Supreme Court heard oral arguments on the District Court's decision on remand in the *Turner* case on October 7, 1996, the first day of the Court's 1996-1997 term.

<sup>2</sup>47 C.F.R. §§76.55(c)(e) and 76.56(b).

3. According to WMFP, after it completed installation of receiving equipment<sup>3</sup> on Americable's headend tower in Merrimack, and verified the receipt of a signal in excess of 12.2 dBmv, it formally requested carriage on Americable's system by letter dated December 8, 1995. When that letter went unanswered, WMFP states that it sent a second letter on January 3, 1995. In subsequent correspondence between Americable and WMFP, the station indicates that there was a dispute between the parties as to the measurement of signal input levels in the results of signal tests performed by Americable's Chief Technicians,<sup>4</sup> and also the results of signal tests performed on behalf of Americable by an outside engineering consultant.<sup>5</sup> While WMFP indicates that it found numerous errors in the tests performed by Americable's consultant, it indicated its willingness to correct any signal quality problems. Moreover, states WMFP, since the consultant's report expressed concern about WMFP's effect on the signal levels of two stations currently carried on Americable's system, WNDS (Channel 50) and WGOT (Channel 60), the station offered to correct any potential problems by the use of tuned traps at the processor input. WMFP points out that this offer has been refused by Americable and it has not responded to WMFP's request to install the tuned traps nor added its signal to its lineup.

4. In its opposition,<sup>6</sup> Americable states initially that the manner in which WMFP's complaint was filed is procedurally defective and this proceeding should therefore be terminated. Americable argues that §0.401(a) of the Commission's Rules requires that all petitions or complaints not requiring a filing fee be either mailed or hand-delivered to the Secretary's Office of the Federal Communications Commission otherwise it "will be returned to the applicant without processing."<sup>7</sup> In the instant case, Americable states that WMFP's petition was mailed directly to a member of the Cable Services Bureau staff, was accepted and then processed as if it had been properly filed. In the event, however, that the Commission does not terminate this proceeding, Americable maintains that WMFP's request that its cable system be ordered to commence carriage of the signal is premature. Americable avers that there is no dispute that

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<sup>3</sup>WMFP states that it installed a four antenna array and an amplifier on the Merrimack headend tower.

<sup>4</sup>While WMFP's test of its signal indicated a signal level of +12.2 dBmv, the signal quality tests performed on two separate occasions by Americable staff indicated a signal level of -14 dBmv (-62 dBm).

<sup>5</sup>The signal tests performed by Mr. Kenneth M. Stiouphile, Consulting Telecommunications Engineer, on March 7 and 12, 1996, using a standard CATV 75-ohm rf signal level meter indicate that while WMFP would be able to deliver a signal that meets the Commission's signal strength requirements with the use of specialized amplification equipment the signal would be of "poor quality (noisy)" with "multiple beats in the form of . . . distortion both inband and out-of-band, which . . . would seriously degrade other channels currently being carried on the cable system," and "channel ringing" which would render "the desired channel's graphics and messaging unreadable at the subscriber's television set."

<sup>6</sup>Americable filed a "Contingent Motion for Leave to File Opposition Out of Time" simultaneously with its opposition. It states that as a result of "inadvertent oversight and a failure to understand the Commission's complaint processes" it missed the August 22, 1996 deadline in which to file its opposition. We will grant this motion as it does not appear to be prejudicial to the petitioner.

<sup>7</sup>47 C.F.R. §0.401.

WMFP cannot deliver a good quality signal to its headend without the use of the specialized equipment provided by the station and it will willingly carry WMFP when the station complies with the Commission's signal delivery requirements. However, in view of the poor signal quality problems pointed out by its engineering consultant,<sup>8</sup> Americable maintains that the only outstanding issue is whether WMFP's use of the additional amplification equipment, filters and traps it has suggested can correct the station's signal problems without degrading the signals of other channels carried on the Merrimack system. Since WMFP has refused, pending the outcome of its complaint, to perform further tests to determine whether the use of its traps would or would not cause potential problems, Americable requests that the Commission instruct the parties to engage in prompt, joint signal tests to resolve this problem. Americable indicates that if no dispute remains after the conclusion of such tests, it will add WMFP to its system.

### DISCUSSION

5. We first address Americable's procedural argument that the instant petition be dismissed as defective for not being filed with the Commission Secretary's office as required by our rules.<sup>9</sup> In this instance, WMFP sent its petition to the Cable Services Bureau rather than to the Secretary's office. While this procedure is not in conformance with a strict reading of our procedural rules, Americable has not introduced any evidence showing that it has been prejudiced by WMFP's actions. Accordingly, we believe that the petition's dismissal and resubmission because it was not initially sent to the Secretary's office would, in this instance, only prolong the impasse between the parties. Turning to the other arguments raised, under the Commission's must-carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.<sup>10</sup> One method of doing such is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>11</sup> Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, its carriage nevertheless may not be foreclosed. Under our rules, a station may provide a cable operator with specialized equipment, at the station's cost, which will improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>12</sup>

6. In this instance, WMFP has followed this path. WMFP, at its cost, has provided Americable with specialized equipment. The burden now falls on Americable to show that WMFP's signal is deficient. It is undisputed, however, that WMFP places an adequate signal

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<sup>8</sup>See footnote 5 above.

<sup>9</sup>47 C.F.R. §0.401.

<sup>10</sup>See paragraph 101, *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993).

<sup>11</sup>47 C.F.R. §76.55(c)(3).

<sup>12</sup>*Report and Order, supra*, at paragraph 104.

over Americable's principal headend using the specialized equipment provided by WMFP.<sup>13</sup> Americable argues instead that the equipment supplied by WMFP may interfere with the reception of two other signals Americable carries on its cable system. However, Americable has failed to introduce any evidence that such interference exists or would exist, or that remedial action on its part would not cure the infirmity. We believe that this matter will be most expeditiously resolved by a joint engineering test as Americable suggests. Therefore, Americable and WMFP shall conduct a joint engineering test to determine whether the reception of WMFP will have any substantial impact on the operation of Americable's system. Should such test show no unreasonable impact, Americable will be ordered to carry WMFP. Should the test demonstrate undue impairment of its operations, then Americable will not be required to carry WMFP.

#### ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by WMFP, Inc. **IS GRANTED** pursuant to §614 of the Communications Act of 1934, as amended (47 U.S.C. §534), and The Americable Group **IS ORDERED** to commence carriage of television station WMFP within sixty (60) days of the joint test described in paragraph 6 above, unless Americable submits, within 15 days of such joint test, an engineering study showing that its carriage of WMFP would unduly impair its operations.

8. **IT IS FURTHER ORDERED** that WMFP shall inform Americable if it intends to provide it with additional specialized equipment within ten (10) days from the release date of this order.

9. **IT IS FURTHER ORDERED** that, in the event that WMFP does supply additional equipment, the joint test shall be conducted within ten (10) days thereafter.

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

FEDERAL COMMUNICATIONS COMMISSION

Gary M. Laden, Chief  
Consumer Protection and Competition Division  
Cable Services Bureau

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<sup>13</sup> There appears to be some dispute whether WMFP has provided Americable all the specialized equipment required to receive WMFP's signal. In this regard, WMFP is instructed to inform Americable whether it intends to provide it with additional equipment 10 days from the release of this order.