

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

In re:

Complaint of Greater Dayton
Public Television against
TCI Cablevision of Indiana, Inc.

CSR-3935-M
IN0402

Request for Carriage



MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: November 24, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving Lynn, Indiana, had declined to carry the station, even though Oxford, the city of license of WPTO, is within fifty miles of the principal headend of TCI's system located at north latitude 40°02'42" and west longitude 84°56'11" and WPTO, therefore, is a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order TCI to carry its signal, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.¹

2. WPTO's petition establishes that it is entitled to carriage on the Lynn cable system, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 19, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

GD 001182

¹ In a notification to WPTO, TCI indicates possible copyright and signal quality concerns, but gives no specifics. WPTO states, however, that it provided TCI with a written copyright indem-

nity agreement and advised the system that it agreed to provide the requisite "good quality signal".

FEDERAL COMMUNICATIONS COMMISSION

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

Roy J. Stewart
Chief, Mass Media Bureau

In re:

Complaint of Greater Dayton CSR-3936-M
Public Television against IN0067
TCI Cablevision of Indiana, Inc.

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: October 20, 1993; Released: November 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ. Ch. 14), Oxford, Ohio, was filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving New Castle, Indiana, had declined to carry the station, even though Oxford is within fifty miles of the system's principal headend at north latitude 39° 56' 49" and west longitude 85° 21' 16" and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order TCI to carry its signal, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.¹

2. WPTO's petition establishes that it is entitled to carriage on the New Castle cable system, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint² filed July 19, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47-U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

GD 001275

¹ On April 5, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving *Turner Broadcasting System, Inc., et al., v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C., April 5,

1993), which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional right and terminated the 120 day Standstill Order previously issued in this case.

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

In re:

Complaint of Greater Dayton
Public Television against
TCI Cablevision of
Indiana, Inc.
Request for Carriage

CSR-3937-M
CSR-3933-M
IN0025

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTO (Educ. Ch. 14), Oxford, Ohio and WPTD (Educ. Ch. 16), Dayton, Ohio, were filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving Winchester, Indiana, had declined to carry the station, even though, allegedly, the Grade B contour of WPTD encompasses the system's principal headend at north latitude 40° 1' 00" and west longitude 84° 59' 31" and Oxford, the city of license of WPTO is within fifty miles of the same location. Both stations, therefore, are "local" signals within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO and WPTD both request that the Commission not only order TCI to carry their signals, but also order that the system carry them on channels 14 and 16, respectively, the channels on which they broadcast over-the-air. No opposition to these petitions has been filed.

2. Staff review of the issues raised and of the materials submitted in WPTD's petition fails to demonstrate that TCI's headend lies within WPTD's Grade B contour.¹ Therefore, the 1992 Cable Act does not entitle WPTD to mandatory carriage on the TCI cable television system serving Winchester, Indiana, and the complaint filed July 19, 1993, by Greater Dayton Public Television (CSR-3933-M) IS DISMISSED pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended.

3. WPTO's petition, however, establishes that it is entitled to carriage on the Winchester cable system because Oxford, Ohio, the city of license of WPTO, is within fifty miles of TCI's headend.² WPTO has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 19,

¹ Calculations for Grade B contours of television stations are based upon the current licensed parameters of the television stations(s) in question and using the methods set forth in §73.684 of the Commission's Rules (Prediction of Coverage).

² The distance computations are based upon the reference

1993, by Greater Dayton Public Television (CSR-3937-M) IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. These actions are taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

point(s) (for the television station's community of license) in §76.53 of the Commission's Rules and the principal headend coordinates provided in the petition and applying the methods in §73.611 of the Commission's Rules (Reference Points and Distance Computation).

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

In re:

Complaint of Greater Dayton Public Television against TCI Cablevision of Indiana, Inc. CSR-3938-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1993; Released: January 25, 1994

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against TCI Cablevision of Indiana, Inc. ("TCI"), pursuant to Section 615 of the Communications Act, 47 U.S.C. § 535. Greater Dayton requests that the Commission order TCI to carry WPTO-TV on TCI's cable system serving Dublin, Indiana, and that WPTO-TV be carried on Channel 14.

2. Pursuant to Section 615(b) of the Communications Act of 1934, as amended, with respect to a cable system with more than 36 channels, a cable operator must carry on its cable system any qualified local noncommercial educational television station requesting carriage, 47 U.S.C. § 535(b)(1).¹ A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. § 535(i)(1)(A); 47 C.F.R. § 76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. § 76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. § 535(i)(2)(A); 47 C.F.R. § 76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. § 535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on TCI's Dublin, Indiana, 37-channel cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial tele-

vision station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to Section 76.53, is within 50 miles of the principal headend of TCI's Dublin, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of a qualified local noncommercial educational television station. In addition, Greater Dayton notes, in its correspondence with Greater Dayton, TCI has not indicated any signal quality deficiencies or copyright concerns with respect to carriage of WPTO-TV. Greater Dayton has submitted two letters, dated May 19, 1993, and June 17, 1993, which it sent to TCI requesting carriage on Channel 14. Greater Dayton also submitted a June 1, 1993 letter from TCI containing TCI's channel lineup for its cable system, which lineup does not include WPTO-TV.

4. According to Section 615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator, 47 U.S.C. § 535(g)(5); 47 C.F.R. § 76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order TCI to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3938-M) IS GRANTED, in accordance with Section 615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. § 535). Furthermore, TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-five (45) days from the release date of this Order on its system serving Dublin, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.263 of the Commission's rules, 47 C.F.R. § 0.263.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ A cable system with more than 36 channels is required to carry a minimum of three qualified local noncommercial educational television stations. A cable system is not required, however, to carry the signals of additional educational stations if

they substantially duplicate the programming broadcast by another qualified local noncommercial educational television station already being carried. See 47 U.S.C. § 535(e). See 47 C.F.R. § 76.56(a)(1) for the definition of substantial duplication.

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

In re:

Complaint of Greater Dayton Public Television against TCI Cablevision of Indiana, Inc. CSR-3939-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against TCI Cablevision of Indiana, Inc. ("TCI"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order TCI to carry WPTO-TV on TCI's cable system serving Richmond, Indiana, and that WPTO-TV be carried on Channel 14.

2. Pursuant to §615(b) of the Communications Act of 1934, as amended, with respect to a cable system with more than 36 channels, a cable operator must carry on its cable system any qualified local noncommercial educational television station requesting carriage, 47 U.S.C. §535(b)(1).¹ A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(1)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(1)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on TCI's Richmond, Indiana, 37-channel cable system. We agree. Greater Dayton has presented the following evidence with respect to

WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of TCI's Richmond, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of a qualified local noncommercial educational television station. In addition, Greater Dayton notes, in its correspondence with Greater Dayton, TCI has not indicated any signal quality deficiencies or copyright concerns with respect to carriage of WPTO-TV. Greater Dayton has submitted two letters, dated May 19, 1993, and June 17, 1993, which it sent to TCI requesting carriage on Channel 14. Greater Dayton also submitted a June 1, 1993 letter from TCI containing TCI's channel lineup for its cable system, which lineup does not include WPTO-TV.

4. According to §615(g)(5), a qualified local noncommercial educational television station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985 at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator, 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant it request that the Commission order TCI to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3939-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Richmond, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegate by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ A cable system with more than 36 channels which is required to carry the signals of three qualified local noncommercial educational television stations is not required, however, to carry the signals of additional such stations the programming of which substantially duplicates the program-

ming broadcast by another qualified local noncommercial educational television station requesting carriage. See 47 U.S.C. §535(e). See 47 C.F.R. §76.56(a)(1) for the definition of substantial duplication.

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

In re:

Complaint of Greater Dayton Public Television against Oak Cable Systems CSR-3940-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Oak Cable Systems ("Oak Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Oak Cable to carry WPTO-TV on Oak Cable's cable system serving St. Paul (Decatur County), Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(1)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(1)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Oak Cable's St. Paul, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Oak Cable's St. Paul, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of a qualified local noncommercial educational television station. Greater

Dayton has submitted a May 28, 1993 letter which it sent to Oak Cable requesting carriage on Channel 14. According to Greater Dayton, Oak Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Oak Cable submitted to Greater Dayton its channel lineup for the St. Paul system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Oak Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3940-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, Oak Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving St. Paul, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

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

In re:

Complaint of Greater Dayton CSR-3941-M
Public Television against
Oak Cable Systems

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Oak Cable Systems ("Oak Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Oak Cable to carry WPTO-TV on Oak Cable's cable system serving Waldron, Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(1)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(1)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Oak Cable's Waldron, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Oak Cable's Waldron, Indiana cable system, located in St. Paul, Indiana. Accordingly, WPTO-TV meets the Com-

mission's definition of a qualified local noncommercial educational television station. Greater Dayton has submitted a May 28, 1993 letter which it sent to Oak Cable requesting carriage on Channel 14. According to Greater Dayton, Oak Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Oak Cable submitted to Greater Dayton its channel lineup for the Waldron system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Oak Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3941-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, Oak Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Waldron, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

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

In re:

Complaint of Greater Dayton Public Television against Country Cable Systems

CSR-3943-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 14, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Country Cable Systems ("Country Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Country Cable to carry WPTO-TV on Country Cable's cable system serving Glenwood, Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(1)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(1)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Country Cable's Glenwood, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Country Cable's Glenwood, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of

a qualified local noncommercial educational television station. Greater Dayton has submitted a May 26, 1993 letter which it sent to Country Cable requesting carriage on Channel 14. According to Greater Dayton, Country Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Country Cable submitted to Greater Dayton its channel lineup for the Glenwood system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Country Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3943-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. § 535). Furthermore, Country Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Glenwood, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

2/17/94

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

In re:

Complaint of Greater Dayton CSR-3984-M
Public Television against IN0630
Sunman Cablevision Company

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1993; Released: January 14, 1994

By the Chief, Mass Media Bureau:

1. On August 2, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that Sunman Cablevision Company ("Sunman"), operator of a cable television system serving Sunman, Indiana, had declined to carry the station, even though WPTO is within fifty miles of the system's principal headend at Sunman¹ and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order Sunman to carry its signal on the cable system, but also order that the system carry it on Channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTO's petition establishes that it is entitled to carriage on the Sunman system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 2, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Sunman Cablevision Company IS ORDERED to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ We note that Sunman Cablevision has not provided its headend coordinates to WPTO as required by Section 867.58(b) of the Rules, despite WPTO's letter of May 28, 1993 requesting carriage. Since no opposition to WPTO's complaint has been

filed, we accept petitioner's conclusion that Sunman Cablevision's headend for this system is located at Sunman, Indiana.

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

In re:

Complaint of Greater Dayton CSR-4031-M
Public Television against
KENS Cable

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1993; Released: February 4, 1994

By the Chief, Mass Media Bureau:

1. On August 23, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that KENS Cable ("KENS"), operator of a cable television system serving Harveysburg, Ohio, had declined to carry the station, even though WPTO is within fifty miles of the system's principal headend at Harveysburg¹ and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order KENS to carry its signal on the cable system, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTO's petition establishes that it is entitled to carriage on the Harveysburg system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 23, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, and KENS Cable IS ORDERED to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ We note that KENS Cable has not provided its headend coordinates to WPTO as required by §76.58(b) of the Rules, despite WPTO's telephone conversation of July 21, 1993 requesting such information. Since no opposition to WPTO's

complaint has been filed, we accept petitioner's conclusion that KENS Cable's headend for this system is located at Harveysburg, Ohio.

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

In re:

Complaint of Greater Dayton
Public Television against
KAS Cable

CSR-4032-M
OH0432

Request for Carriage

Logfiled 2/17/94

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1993; Released: February 4, 1994

By the Chief, Mass Media Bureau:

1. On August 23, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that KAS Cable ("KAS"), operator of a cable television system serving Wright Patterson AFB, Ohio, had declined to carry the station, even though WPTO is within fifty miles of the system's principal headend at Fairborn, Ohio¹ and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order KAS to carry its signal on the cable system, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTO's petition establishes that it is entitled to carriage on the Wright Patterson AFB system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 23, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, and KAS Cable IS ORDERED to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ We note that KAS Cable has not provided its headend coordinates to WPTO as required by §76.58(b) of the Rules, despite WPTO's letter of May 28, 1993 requesting such informa-

tion. Since no opposition to WPTO's complaint has been filed, we accept petitioner's conclusion that KAS Cable's headend for this system is located at Fairborn, Ohio.

✓ 2/19/94

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

In re:

Complaint of Greater Dayton
Public Television against
KENS Cable

CSR-4033-M

Log 93-4 = 2/19/94

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1993; Released: February 4, 1994

By the Chief, Mass Media Bureau:

1. On August 23, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ. Ch. 14), Oxford, Ohio, was filed with the Commission claiming that KENS Cable ("KENS"), operator of a cable television system serving Clarksville, Ohio, had declined to carry the station, even though WPTO is within fifty miles of the system's principal headend at Clarksville¹ and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order KENS to carry its signal on the cable system, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTO's petition establishes that it is entitled to carriage on the Clarksville system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 23, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, and KENS Cable IS ORDERED to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ We note that KENS Cable has not provided its headend coordinates to WPTO as required by §76.58(b) of the Rules, despite WPTO's letter of July 12, 1993 requesting carriage. Since

no opposition to WPTO's complaint has been filed, we accept petitioner's conclusion that KENS Cable's headend for this system is located at Clarksville, Ohio.

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

In re:

Complaint of Greater Dayton
Public Television against
Sammons Communications, Inc.

CSR-4090-M
IN0057

Request for Carriage and
Channel Positioning

MEMORANDUM OPINION AND ORDER

Adopted: December 15, 1994; Released: December 21, 1994

By the Cable Services Bureau:

INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) became law.¹ On December 4, 1992, the 1992 Cable Act's requirements for mandatory carriage of certain noncommercial educational stations set forth in §5 of the 1992 Act became effective.² On October 4, 1993, Greater Dayton Public Television (GDPT), licensee of station WPTO (Educ., Channel 14), Oxford, Ohio, filed a complaint seeking to ensure WPTO's carriage on channel 14 on the cable system of Sammons Communications, Inc., serving Connersville, Indiana. Sammons became the successor-in-interest of the petition filed by Cardinal Communications, Inc. on July 22, 1993. On October 28, 1993, Sammons filed an opposition to this complaint. GDPT filed a reply to this opposition on November 8, 1993.

SUMMARY OF PLEADINGS

2. GDPT maintains that, despite its status as a qualified noncommercial television broadcast station that operates within 50 miles of the principal headend of Sammons' Connersville cable system, Sammons refuses carriage of the station on its requested channel position. Sammons seeks a ruling that it is not required to carry WPTO until the station pays for equipment which is necessary to receive its signal, and further pays the estimated increase in copyright royalty payments associated with its carriage or, in the alternative, establishes a letter of credit in the amount of

the estimated fees. Sammons also seeks permission to carry WPTO on channel 18 in order to avoid the cost of removing traps currently on channel 14. WPTO states that Sammons is acting in violation of the 1992 Cable Act, and contrary to the Commission's implementing rules.

3. On July 19, 1993 WPTO was notified that Sammons Communications, Inc. had purchased Cardinal. GDPT wrote to Sammons on July 23, 1993 requesting confirmation that WPTO would be carried in Connersville on channel 14 by a date specific. Sammons replied on August 16, 1993 by stating that carriage in Connersville would require a \$1,176.33 advance payment for equipment (and installation of that equipment) necessary for a good quality signal, and needed either advance payment or a letter of credit to satisfy the \$1,110.48 copyright liability Sammons would incur for carriage of GDPT's stations. This letter does not specify whether these costs are related to the carriage of WPTO, or co-owned WPTD or both stations. Sammons again included a channel line-up for the Connersville system showing carriage of WPTO on channel 18.

4. Further correspondence between the parties failed to resolve these issues. In particular, on September 3, 1993 GDPT proposed channel 4 as an alternative channel position for its station on this system. Sammons responded to this proposal by reiterating its claim of a great expense to trap a pay channel currently carried on channel 14 and its inability to accommodate the request for channel 4 since another broadcast signal occupies that position. On October 4, 1993 GDPT filed its complaint with the Commission seeking carriage of WPTO on channel 14 in accordance with the terms of Section 5 of the 1992 Cable Act.

5. In its reply to the complaint, Sammons begins by noting that WPTO has not been carried in Connersville in the past. It states that no equipment has ever been located on the tower which would enable the Connersville system to receive WPTO's signal and, as such, WPTO must bear the costs of a specialized antenna and other equipment necessary for the cable system to receive a good quality broadcast signal from WPTO.³ Sammons asserts that to carry the complainant on channel 14 would require removing and replacing 560 channel traps at a total cost of approximately \$10,000. Additionally, Sammons argues that because carriage of WPTO would increase Sammons's copyright liability WPTO—prior to carriage—must either pay the estimated cost of the first copyright period or establish a letter of credit or other security for the period of the station's must carry election.⁴ Alternatively, Sammons requests that the Commission not require carriage until the Supreme Court decides the validity of the 1992 Cable Act's must-carry provisions.

6. In its reply to Sammons, WPTO states its belief that past correspondence confirming that the station would be carried on channel 18 proves that WPTO has met signal quality standards; thus no "specialized" antennas are neces-

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

² 47 U.S.C. § 535. Compare with *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 114 S. Ct. 2445 (1994). In remanding the case, the Court determined that issues of material fact must be resolved by the lower court. Specifically, the Court indicated that the government must show that the must-carry provisions are necessary to alleviate the alleged harms and that they do not burden substantially more speech than necessary to further such protection. *Id.* at 2451.

³ We note that in its complaint, GDPT indicates that it received signal quality measurement data for WPTD, but not for WPTO.

The Commission's must-carry implementing rules required a cable operator to notify all local broadcast stations not meeting a good quality signal by May 3, 1993. 47 C.F.R. § 76.58(d). GDPT received no information suggesting that WPTO did not provide a good quality signal. This is further confirmed by the inclusion of WPTO on the list of signals to be carried on June 23.

⁴ We note that the election of must-carry status for a three-year period applies only to commercial stations. Qualified local commercial stations request carriage under the provisions of Section 5 of the 1992 Cable Act and that request is not subject to any time limitation. Section 615(b)(1).

sary for Sammons to receive WPTO's signal. WPTO argues that where a broadcast station already delivers a good signal a cable operator may not shift the costs of routine reception of that signal to those seeking must-carry status.⁵ WPTO requests that the Commission review Sammons's current method of receiving WPTO and determine whether any existing antennas used to receive Cincinnati area stations (in the same general direction as Oxford) can be utilized to receive WPTO. Finally, WPTO states that it is located only 21 miles from Connersville and thus is a "local" signal for Copyright Act purposes; thus, Sammons will incur no copyright liability for the station's carriage.

DISCUSSION

7. We uphold WPTO's complaint against Sammons. With regard to the issue of signal quality, § 615(g)(4) of the Communications Act of 1934, as amended, states that "a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission." 47 U.S.C. § 535(g)(4). Because the cable operator is in the best position to know whether a given noncommercial educational station is providing a good quality signal to the system's principal headend, we believe that the initial burden of demonstrating the lack of good quality signal appropriately falls on the cable operator. In meeting this burden, the cable operator must show that it has used good engineering practices, as defined below, to measure the signal delivered to the headend.

8. While the 1992 Cable Act does not state what constitutes a "good quality" signal where VHF or UHF noncommercial stations are concerned, the Act did adopt a standard for determining the availability of VHF and UHF commercial stations at a cable system's headend. To establish the availability of a VHF commercial station's signal, the Act set out a standard of -45 dBm at a cable system's headend. A standard of -45 dBm was established for UHF commercial station signals. Consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as *prima facie* tests to initially determine, absent other evidence, whether VHF or UHF non-commercial stations place adequate signal levels over a cable system's principal headend. Where there is a dispute over signal level measurements, cable operators are expected to employ sound engineering measurement practices. Therefore, signal strength surveys should, at a minimum, include the follow-

ing: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were done.

9. While Sammons believes that additional equipment is needed to enable its Connersville system to receive a good quality signal for WPTO and that the station should purchase the needed equipment, we find that the cable operator has failed to substantiate its case. Though Cardinal Communications, Sammons's predecessor in interest, performed a signal strength test at its Connersville system for WPTD,⁶ no such signal strength data has been provided WPTO. Consequently, we find that Sammons failed to carry its burden of proof when it denied WPTO carriage based on inferior signal quality.

10. We also find that Sammons is required to carry WPTO on channel 14. Section 615(g)(5) of the 1992 Cable Act permits a noncommercial educational station to elect its over-the-air channel number as its channel position on a cable system.⁷ WPTO has properly requested carriage on channel 14 on Sammons' cable system the same channel number it is broadcast over the air. Under our rules, cable operators must comply with the channel positioning requirements absent a compelling technical reason. Sammons has failed to show a compelling reason to warrant waiver of the on-channel carriage requirement. Although we have stated previously that the need to employ additional traps or make technical changes are not sufficient grounds for waiver,⁸ we do believe that there are certain circumstances where the costs could be so compelling as to warrant a waiver of the rules. Apart from an unsupported claim that replacing the traps to allow it to carry WPTO on channel 14 would cost 10,000 dollars, Sammons has introduced no evidence demonstrating how such costs would substantially impact the cable system. Unsupported claims of costs in isolation are not grounds for waiver of the commission's rules. See *Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640, 5641 (1990).

11. Finally, with regard to copyright liability, Sammons contends that its copyright liability would increase were it to carry WPTO. WPTO argues that its carriage would not result in Sammons' incurring additional copyright liability because its signal is considered "local" for copyright purposes. We begin by noting that copyright liability would not attach under the Copyright Act if, under our Rules in effect on April 15, 1976, WPTO would have been considered a "local" station entitled to carriage based on our

⁵ GDPT states that is unclear whether its signal is currently carried by this cable system since it received notification from Cardinal on June 1, 1993, that WPTO would be added to the Connersville system on channel 18 at that time. If it is being carried, complainant contends then its signal is being received with the currently available antenna.

⁶ Cardinal tested WPTD's signal. The test results, included in WPTO's pleadings, lists the headend location, the engineer's name, the type of antenna use, the level at which the reading was taken, tower height, calibration, measurement methodology, date and time of tests, weather at time of test, signal level. At the bottom of this document the word "yes" appears in response to the statement "meets quality signal standards".

⁷ Noncommercial educational stations are also allowed to choose their cable channel position based on the cable channel

on which it was carried on July 19, 1985. See 47 C.F.R. § 76.57(b).

⁸ "We do not believe that inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ additional traps or make technical changes are sufficient reasons for denying the channel positioning request of a must-carry signal. Only where placement of a signal on a chose channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem, will we permit cable operators to carry a broadcast signal on a channel not chosen by the station." *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965, para. 91 (1993). Sammons has introduced no evidence which would indicate that removal of the necessary traps would constitute a substantial technical problem.

former must-carry rules.⁹ Section 76.57 of our former carriage Rules covered a cable system, such as the Connersville system, that "serves a community located wholly outside all major and smaller television markets." Under this former section, WPTO would have had must carry status if the Connersville system were within WPTO's Grade B contours; or if Connersville system were within WPTO's specified zone.¹⁰ A review of the pertinent information reveals that WPTO could have demand carriage under our former carriage rules as a "local" station under either criteria. Thus, Sammons has no claim to copyright indemnification.

12. Accordingly, the petition filed on October 4, 1993, by Greater Dayton Public Television, IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended. Sammons Communication, Inc., of Dallas, Texas IS ORDERED to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this Order. This Order shall take effect unless Sammons communications Inc., of Dallas, Texas submits, within fifteen (15) days from the release date of this order, engineering data which demonstrates WPTO's poor signal quality at the principal headend of Sammons communication Inc., of Dallas, Texas serving Connersville, Texas. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

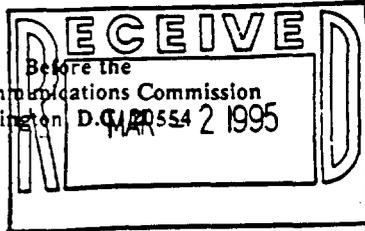
William H. Johnson
Deputy Chief, Cable Services Bureau

⁹ 17 U.S.C. §111(d)(3)(A)-(C),(f) (1993).

¹⁰ A "specified zone of a television broadcast station is the area extending 35 air miles from the reference point in the commu-

nity to which that station is licensed or authorized by the Commission..." § 76.5(f) (former Rules).

Before the
Federal Communications Commission
Washington, D.C. 20554
MAR 2 1995



In re:

Complaint of Greater Dayton	CSR-4168-M
Public Television against	CSR-4169-M
TCI Cablevision of Ohio	CSR-4170-M
	CSR-4171-M
Request for Carriage and	CSR-4172-M
Channel Positioning	

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 1995; Released: February 1, 1995

By the Cable Services Bureau:

INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) became law.¹ On December 4, 1992 the 1992 Cable Act's requirements for mandatory carriage of noncommercial educational (NCE) stations set forth in Section 5 of the 1992 Act became effective.² On December 10, 1993 Greater Dayton Public Television (GDPT), licensee of station WPTO (Educ., Channel 14), Oxford, Ohio filed five complaints seeking to ensure WPTO's carriage on channel 14 of TCI Cablevision of Ohio, Inc.'s (TCI) system serving Golf Manor, Middletown, Wilmington, Fairfield, and Hamilton.³ On January 11, 1994, TCI filed a consolidated opposition to these complaints. GDPT filed a reply to this opposition on February 14, 1994.

SUMMARY OF PLEADINGS

2. WPTO maintains that, despite its status as a qualified, local NCE broadcast station,⁴ TCI refuses to honor WPTO's channel-election. Pursuant to the Commission's must-carry rules, a qualified NCE is entitled to carriage on the cable operator's system and may choose a channel position based on either its on-air channel or the channel on which it was carried as of July 19, 1985.⁵ WPTO has elected its on-air channel, channel 14, as its channel position on respondent's systems.

3. TCI does not dispute that WPTO is a qualified NCE entitled to carriage on its systems, nor does respondent dispute that, ordinarily, WPTO would be entitled to elect a channel based on its on-air channel. However, respondent contends that to locate WPTO on channel 14 would require TCI to switch one of its pay services to another channel. To effectuate complainant's request would also, according to TCI, require the removal and retrapping of positive and negative traps of almost 27,000 subscribers. The estimated cost of this effort is \$307,000. TCI acknowledges that the Commission has stated that "inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ additional traps or make technical changes" are not enough to bar fulfillment of an operator's must-carry obligations;⁶ nonetheless, TCI believes that to require compliance in this instance is well-beyond what the Commission envisioned and thus WPTO's request should be denied.

4. TCI states that it offered to carry WPTO on channel 15 and that "it makes no sense to spend over \$300,000 to move WPTO a mere *one* channel down the television dial."⁷ Respondent states that complainant also refused its offer to educate viewers about an alternative channel position, and that WPTO has failed to explain why placement on channel 15 or channel 4 (which TCI allegedly offered as a second alternative) is significantly different than channel 14.⁸

5. TCI concludes by requesting that, if WPTO's complaint is granted, respondent be given twelve (12) weeks beyond the standard 45 days in which to comply.⁹ TCI bases this request on its estimates regarding the number of traps that can be produced per week and the installation time. WPTO requests that the Commission reject this extension of time.

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

² 47 U.S.C. § 535. Compare with *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 114 S. Ct. 2445 (1994). In remanding the case, the Court determined that issues of material fact must be resolved by the lower court. Specifically, the Court indicated that the government must show that the must-carry provisions are necessary to alleviate the alleged harms and that they do not burden substantially more speech than necessary to further such protection. *Id.* at 2451.

³ All these communities are located in Ohio.

⁴ 47 C.F.R. § 76.55(a), (b); § 76.56(a).

⁵ 47 C.F.R. § 76.57(b).

⁶ *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965, 2988 para. 91 (1993).

⁷ Consolidated Opposition to Channel Positioning Complaints, p.4.

⁸ TCI considers WPTO's channel request unreasonable given that complainant "has failed to adequately explain why it believes placement on channel 4 [another channel option] or on

channel 15 will cause great harm or provide 'inadequate visibility' for the station... In any event, WPTO's concerns are vastly overstated...[and] since carriage of WPTO began only this summer, the Station has no historical linkage to cable channel 14. Moreover, as already explained, TCI has offered to work with WPTO in developing a promotional package which would educate subscribers about WPTO's cable channel position." Consolidated Opposition To Channel Positioning Complaints, p. 5. WPTO contends that it never "volunteered an alternative placement on cable channel 4...[and that] all urban cable operators in the Dayton and Cincinnati markets have agreed to and carry WPTO on channel 14". Consolidated Reply to Consolidated Opposition to Channel Positioning Complaints, p. 3. Thus, to place WPTO on a channel other than channel 14--"without appropriate promotional support"--would cause further harm to WPTO. *Id.* at 5. WPTO considers TCI's offer of promotional support to be minimal. *Id.* at 2.

⁹ 47 C.F.R. § 76.61(b)(2).

DISCUSSION

6. We find that TCI is required to carry WPTO on channel 14. Section 615(g)(5) of the 1992 Cable Act permits a NCE to elect its over-the-air channel number as its channel position on a cable system,¹⁰ and WPTO has properly chosen its over-the-air channel. There is no requirement in the Act or our rules that a broadcaster explain why the operator's on-channel preference is less suitable than the broadcaster's statorily-based channel election. Further, cable operators must comply with the channel positioning requirements absent a compelling technical reason.¹¹ The Commission specifically held that the need to replace traps, or to reconfigure the basic tier, or to make technological changes are generally not grounds for waiver. Nevertheless, in adopting the on-channel carriage rules, the Commission recognized that there well might be certain circumstances where the compliance costs incurred by a cable operator would be so compelling as to warrant a waiver. To obtain such a waiver, a petitioner must first submit detailed evidence demonstrating the compliance costs. The petitioner must then demonstrate how such costs would substantially impact the cable system. TCI has failed to make these necessary showing.

7. Accordingly, the petition filed on December 8, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with Section 615(g)(5) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Ohio, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 in accordance with the above decision twelve weeks (12) from the release date of this *Order*.

8. This action is taken authority delegated by Section 0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

GD 001146

¹⁰ *Supra* note 5.

¹¹ *Supra* note 6.

✓ 2/17/94

FEDERAL COMMUNICATIONS COMMISSION

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

Roy J. Stewart
Chief, Mass Media Bureau

In re:

Complaint of Greater Dayton CSR-3978-M
Public Television against CSR-3979-M
Northern Ohio Cable

Requests for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 6, 1993; Released: January 12, 1994

By the Chief, Mass Media Bureau:

1. On August 2, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTD (Educ., Ch. 16), Dayton, Ohio, and WPTO (Educ., Ch. 14), Oxford, Ohio, were filed with the Commission claiming that Northern Ohio Cable ("Northern"), operator of a cable television system serving portions of Wayne County, Indiana, had declined to carry the stations, even though the cities of license of WPTD and WPTO are within 50 miles of the system's principal headend¹ and the stations are therefore "local" signals within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD and WPTO also request that the Commission not only order Northern to carry the signals on the cable system, but also order that the system carry them on Channels 16 and 14, respectively, the channels on which they broadcast over-the-air. No opposition to these petitions have been filed.

2. WPTD and WPTO's petitions establish that they are entitled to carriage on the Wayne County system and they have requested carriage on their over-the-air broadcast channels, as they are permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in these matters, the complaints filed August 2, 1993, by Greater Dayton Public Television ARE GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Northern Ohio Cable IS ORDERED to commence carriage of WPTD and WPTO on cable channels 16 and 14 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

¹ We note that Northern has not provided its headend coordinates to WPTO and WPTD as required by Section 76.58(b) of the Rules, despite the stations' letters of May 28, 1993, requesting carriage. Since no oppositions to WPTO and WPTD's com-

plaints have been filed, we accept petitioner's conclusion that Northern's headend for this system is located within 50 miles of both stations' cities of license.

FEDERAL COMMUNICATIONS COMMISSION

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

William H. Johnson, Deputy Chief
Cable Services Bureau

In re:

Complaints of Greater Dayton	CSR-3980-M: IN0867
Public Television against	CSR-3981-M: IN0867
MW1 Cablesystems, Inc.	CSR-3982-M: IN0924
	CSR-3983-M: IN0870
	CSR-3985-M: IN0956

Petitions for Reconsideration

MEMORANDUM OPINION AND ORDER

Adopted: May 11, 1994;

Released: May 20, 1994

By the Chief, Cable Services Bureau:

1. On February 14, 1994, petitions for reconsideration,¹ on behalf of MW1 Cablesystems, Inc. ("MW1"), operator of cable systems serving Economy, Metamora, Laurel and Newpoint, Indiana. MW1 requests that the Commission reconsider its December 6, 1993 actions² ordering MW1 to carry Television Broadcast Stations WPTD (Educ., Ch. 16), Dayton, Ohio, and WPTO (Educ., Ch. 14), Oxford, Ohio, on the above-listed systems. A response to these petitions was filed on February 24, 1994, on behalf of Greater Dayton Public Television.

2. In support of its requests, MW1 states that it is not required to carry WPTD and WPTO because the signals do not provide good quality signals to the cable systems' headends and it submits engineering studies for each system that supports this conclusion. These signal quality measurements are not only confirmed by Greater Dayton in its follow-up letter, but it also states that "it is *not* cost effective at this time to attempt to bolster its signal to the requisite levels."

3. Staff review of the undisputed engineering data submitted by MW1 confirms its contention that WPTD and WPTO's signal quality at the systems' designated headends is not sufficient to entitle the stations to mandatory carriage on MW1's cable systems serving Economy, Metamora, Laurel and Newpoint, Indiana. See 47 U.S.C. §535(g)(4). Accordingly, the petitions for reconsideration, filed February 14, 1994, ARE GRANTED and our Orders adopted December 6, 1993, ARE RESCINDED, pursuant to authority delegated in §§0.321 and 1.106 of the Commission's Rules.

¹ "Emergency Petition(s) for Stay" were filed concurrently with these petitions requesting that the Commission stay the effective date of its decisions until it acts on MW1's reconsideration requests. However, due to the action taken herein, the

requests for stay are unnecessary and are hereby dismissed.
² *Greater Dayton Public Television against MW1 Cablesystems, Inc.*, DA 93-1555, DA 93-1559, DA 93-1560, and DA 93-1556 (released January 12, 1994).

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

In re:

Complaint of Greater Dayton	CSR-4041-M
Public Television against	CSR-4042-M
Sammons Communications	IN0131

Requests for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1994;

Released: May 18, 1994

By the Chief, Cable Services Bureau:

1. On August 30, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTD (Educ., Ch. 16), Dayton, Ohio, and WPTO (Educ., Ch. 14), Oxford, Ohio, were filed with the Commission claiming that Sammons Communications ("Sammons"), operator of a cable television system serving Brookville, Indiana,¹ had declined to carry the stations, even though the cities of license of WPTD and WPTO are within fifty miles of the system's principal headend located in Brookville at N. Latitude 39°25'23" and W. Longitude 85°01'53", and the stations are therefore "local" signals within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD and WPTO also request that the Commission not only order Sammons to carry the signals, but also order the system to carry them on Channels 16 and 14, respectively, the channels on which they broadcast over-the-air. An opposition to these petitions has been filed on behalf of Sammons to which petitioner has responded.

2. In support of its petitions, WPTD and WPTO state that on May 3 and 24, 1993, respectively, each was informed by the system's previous owner, Cardinal Communications, Inc. ("Cardinal"), of its station's signal strength deficiency at the Brookville headend, however, no specific data were attached. At the same time, WPTD indicates that it was also informed of Cardinal's concerns over the possibility of increased copyright costs should WPTD be carried. By letter dated May 28, 1993, WPTD formally requested carriage on the Brookville system and agreed to indemnify Cardinal for any increased copyright costs once specific estimates were supplied and reasserted its rights to carriage on cable channel 16. To date, WPTD maintains that no copyright estimates have been received. On the same date, WPTO rejected Cardinal's notice regarding its

signal strength as untimely and failing to provide specific measurement information. In that letter, WPTO also reasserted its own carriage rights on cable channel 14. Subsequently, on June 10, 1993, petitioners state that Cardinal submitted signal strength test information which indicated a measurement of -45 dBm² for both WPTD and WPTO and requested costs for equipment in advance of the stations' carriage. Both stations point out, however, that on the test sheet provided by Cardinal the system indicates a yes in response to a question as to whether the signals meet the signal quality standards. On June 28, 1993, WPTD and WPTO again requested carriage and asserted that since both stations provide a good quality signal they are not responsible for the costs of any additional equipment. On July 6, 1993, just prior to the system's sale to Sammons, Cardinal indicated to WPTD and WPTO that a further review of the signal quality and equipment cost estimates was necessary. Nevertheless, petitioners aver that once Sammons was advised of the situation after the sale, it refused to carry the stations until such time as the system is reimbursed for the costs of additional equipment. To date, petitioners argue, neither station has been added to the Brookville system.

3. In its response, Sammons states that it has had ongoing discussions regarding the carriage of WPTD and WPTO, but the stations have never been carried on the Brookville system in the past and no equipment is located on the tower which would enable it to receive the signals. Sammons maintains that the *Clarification Order in MM Docket No. 92-259*, 8 FCC Rcd 4142 (1993), requires the broadcaster, and not the system, to bear the cost of any specialized antennas or equipment necessary for the reception of a signal. It argues that in this instance it is only asking WPTD and WPTO to pay for the cost of the antenna while Sammons states that it will buy other necessary equipment.

4. WPTD and WPTO state in reply that the *Clarification, supra*, requires a broadcaster to reimburse a system for equipment only in instances where such equipment is necessary to receive a good quality signal. In this case, petitioners aver, test results have shown that both WPTD and WPTO provide a good quality signal to the Brookville headend. Therefore, they insist, they are not required to pay for the cost of an antenna.

5. We are not persuaded by Sammons' request that WPTD and WPTO be required to reimburse the system for the cost of an antenna to receive the signals. The *Report and Order in MM Docket No. 92-259*, at paragraph 104 states that ". . . we generally agree . . . that it is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend (emphasis supplied.)" Further, at paragraph 11 of the *Clarification, supra*, we state that "cable operators may not shift the costs of routine reception of broadcast signals to those stations seeking must-carry status." In the instant case, Sammons does not dispute that WPTD and WPTO provide good quality signals to its headend. There

¹ The Brookville system was operated by Cardinal Communications, Inc. up until July 22, 1993, when it was purchased by Sammons.

² A standard of -45 dBm was established for determining the availability of UHF commercial stations at a cable system's headend. Since these standards address the issue of availability

of a station's signal, consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as prima facie tests to initially determine whether a NCE station provides a cable system with a good quality signal.

fore. WPTD and WPTO are not obligated to provide the cost of any equipment Sammons feels necessary to receive their signals.

6. WPTD and WPTO's petitions establish that they are entitled to carriage on the Brookville cable system, and they have requested carriage on their over-the-air broadcast channels, as they are permitted to do under Section 5 of the 1992 Cable Act. Accordingly, the petitions filed August 30, 1993, by Greater Dayton Public Television ARE GRANTED, pursuant to Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Sammons Communications IS ORDERED to commence carriage of WPTD and WPTO on cable channels 16 and 14, respectively, forty-five (45) days from the release date of this *Order*. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

FEDERAL COMMUNICATIONS COMMISSION

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

Roy J. Stewart
Chief, Mass Media Bureau

In re:

Complaint of Independence CSR-3801-M
Public Media of NJ0478
Philadelphia, Inc. against
Comcast Cablevision of
Mercer County, Inc.

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1993;

Released: June 24, 1993

By the Chief, Mass Media Bureau:

1. On February 23, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that Comcast Cablevision of Mercer County, Inc. ("Comcast"), had declined to carry the station, even though Philadelphia is within fifty miles of the system's principal headend at Trenton, New Jersey, and it is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

2. On March 3, 1993, Comcast filed a "Reply", stating that it declined to carry Station WYBE on its system serving Mercer County pending the resolution of the *Standstill Order* and of the litigation involving the constitutionality of the 1992 Cable Act in *Turner Broadcasting System, Inc. et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992).

3. On April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving *Turner Broadcasting System, Inc., supra*, which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and terminated the 120 day *Standstill Order* previously issued in this case.

4. Accordingly, the basis for Comcast's declining carriage of WYBE in its reply no longer exists. Therefore, the complaint filed February 23, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Comcast Cablevision of Mercer County, Inc. IS ORDERED to commence carriage of WYBE forty-six (46) days from the date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

¹ Although WYBE's petition was originally filed on February 23, 1993, it was not perfected and accepted for filing until April

16, 1993.

Federal Communications Commission

WYBE/
C-Tec
DA 93-696

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

Somerville, New Jersey, and the complaint filed February 23, 1993, by Independence Public Media of Philadelphia, Inc. IS DISMISSED, pursuant to Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

In re:

Complaint of Independence
Public Media of Philadelphia,
Inc. against C-Tec Cable
Systems

CSR-3802-M

Request for Carriage

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1993;

Released: June 24, 1993

By the Chief, Mass Media Bureau:

1. On February 23, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that C-Tec Cable Systems ("C-Tec"), had declined to carry the station, even though Philadelphia is within fifty miles of the system's principal headend at Dallas, Pennsylvania, and it is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

2. On March 18, 1993, C-Tec filed a motion for extension of time, in which it noted the pending litigation involving *Turner Broadcasting System, Inc., et al v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992). On April 13, 1993, C-Tec filed its opposition to the complaint stating that WYBE mistakenly identifies its principal headend as being located in Dallas, Pennsylvania. C-Tec asserts that its principal headend is actually located in Somerville, New Jersey, which is entirely outside WYBE's Grade B contour and 57.7 miles from WYBE's city of license. As a result, C-Tec contends that WYBE is not a "local" station, as defined by the rules, and it is not required to be carried on the system serving Morris, Hunterdon, and Somerset, New Jersey.

3. On April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation concerning *Turner Broadcasting System, Inc., supra*, which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and which terminated the *Standstill Order* previously issued in this matter. However, staff review of the issues raised and of the materials submitted in this matter fails to demonstrate either that C-Tec's headend lies within WYBE's Grade B contour or that C-Tec's headend is fifty miles or less from the reference point of WYBE's principal community. Therefore, the 1992 Cable Act does not entitle WYBE to mandatory carriage on the C-Tec system served from

¹ Although WYBE's petition was originally filed on February 23, 1993, it was not perfected and accepted for filing until April

16, 1993.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 23 1993

IN REPLY REFER TO:
4620-PP

Peter H. Doyle, Esq.
Arter & Hadden
1801 K Street, N. W.
Suite 400K
Washington, DC 20006-1301

In re: Independence Public Media
of Philadelphia, Inc.
(WYBE)
CSR-3803-M; PA2539

Dear Mr. Doyle:

On March 8, 1993, Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, filed a petition for declaratory ruling claiming that Comcast Cablevision of Philadelphia had declined to carry WYBE on its system serving Philadelphia, Pennsylvania. Subsequently, by letter dated June 18, 1993, you requested dismissal of the petition as Comcast has agreed to carry the station.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling, filed March 8, 1993, on behalf of WYBE, is dismissed.

Sincerely,

Ronald Parver
Chief, Cable Television Branch
Video Services Division
Mass Media Bureau

PPusey:gc/vs:mms
uph
JL
JP

Federal Communications Commission

WYBE
Garden
DA 93-695

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

munications Act of 1934, as amended, and Garden State
Cablevision, L.P. IS ORDERED to commence carriage of
WYBE forty-six (46) days from the date of this Order. This
action is taken by the Chief, Mass Media Bureau, pursuant
to authority delegated by Section 0.283 of the Commis-
sion's Rules.

In re:

FEDERAL COMMUNICATIONS COMMISSION

Complaint of Independence Public Media of Philadelphia, Inc.
against Garden State Cablevision, L.P.
CSR-3804-M
NJ0241

Roy J. Stewart
Chief, Mass Media Bureau

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1993; Released: June 24, 1993

By the Chief, Mass Media Bureau:

1. On February 23, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ. Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that Garden State Cablevision, L.P. ("Garden"), had declined to carry the station, even though Philadelphia is within fifty miles of the system's principal headend at Cherry Hill, New Jersey, and it is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

2. In its letter declining to carry WYBE, Garden noted the pendency of the Commission's *Notice of Proposed Rulemaking in MM Docket No. 92-259*, 7 FCC Rcd 8055 (1992), and concluded that it was premature for the system to change its channel line-up prior to the Commission's adoption of its proposed must-carry rules. Further, in a March 3, 1993 "Reply", Garden cited the outstanding *Standstill Order* and the pending litigation involving the constitutionality of the 1992 Cable Act in *Turner Broadcasting System, Inc. et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992).

3. On March 11, 1993, the Commission adopted its must-carry rules in the *Report & Order in MM Docket No. 92-259*, FCC 93-144 (released March 29, 1993). Subsequently, on April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving *Turner Broadcasting System, Inc., supra*, which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and terminated the 120 day *Standstill Order* previously issued in this case.

4. Accordingly, the basis for Garden's declining carriage of WYBE in its letter and reply no longer exist. Therefore, the complaint filed February 23, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Com-

¹ Although WYBE's petition was originally filed on February 23, 1993, it was not perfected and accepted for filing until April

16, 1993.

Federal Communications Commission

DA-93-1048

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

In re:

Complaint of Independence Public
Media of Philadelphia, Inc.
against Suburban Cable TV Co.,
Inc.

CSR-3806-M
PA1650

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: August 23, 1993; Released: September 1, 1993

By the Chief, Mass Media Bureau:

1. On February 23, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that Suburban Cable TV Co., Inc. ("Suburban")² had declined to carry the station, even though Philadelphia is within fifty miles of the system's principal headend at Pottstown, Pennsylvania, and it is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) [1992 Cable Act].

2. On April 13, 1993, Suburban filed an opposition to this complaint, in which it acknowledges that WYBE meets the 1992 Cable Act's tests as a qualified NCE station because it is located within 50 miles of the system's principal headend. However, Suburban contends that WYBE fails to deliver either a predicted Grade B or a good quality signal to its headend. It argues, therefore, that it is not required to carry WYBE's signal, pursuant to Section 615(g)(4) of the 1992 Cable Act. In support of its contention, Suburban submits an engineering survey prepared by the consulting firm of Cohen, Dippell, and Everist, P.C. that indicates that WYBE delivers an off-air signal to Suburban's headend processing equipment that is -52.05 dBm. In addition, Suburban includes pictures of videotaped programming taken from WYBE's signal on April 8, 1993, between 6:00 and 6:30 p.m. which, according to Suburban, indicate that the pictures received frequently include snow and both leading and lagging ghosts. Suburban asserts that because the signal strength of WYBE is well below the -45 dBm standard established by the Commission for commercial UHF sta-

tions, and because the quality of the station's signal is poor as revealed by the videotape, WYBE's petition must be denied.

3. Section 615(g)(4) of the Communications Act of 1934, as amended, states that "a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission." 47 U.S.C. 535(G)(4). Because the cable operator is in the best position to know whether a given NCE station is providing a good quality signal to the system's principal headend, we believe that the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. In meeting this burden, the cable operator must show that it has used good engineering practices, as defined below, to measure the signal delivered to the headend.

4. With respect to the standard to be used to determine what constitutes a "good quality" signal, we note that the 1992 Cable Act failed to set a standard for either VHF or UHF noncommercial stations. However, the 1992 Cable Act did adopt a standard for determining the availability of VHF and UHF commercial stations at a cable system's headend. To establish the availability of a VHF commercial station's signal, the 1992 Cable Act set out a standard of -49 dBm at a cable system's headend. A standard of -45 dBm was established for UHF commercial station signals. Consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as *prima facie* tests to initially determine, absent other evidence, whether VHF or UHF non-commercial stations place adequate signal levels over a cable system's principal headend.

5. In this instance, Suburban determined WYBE's signal strength to be below the requisite level for a UHF commercial station. We find, however, that the cable system failed to follow generally acceptable engineering practices in making its determination. Generally, if the test results are less than -51 dBm for a UHF station, we believe that at least four readings must be taken over a two-hour period. Where the initial readings are between -51 dBm and -45 dBm, inclusive, we believe that the readings should be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results.³

6. In addition to the information required by our rules to be furnished to the affected station when there is a dispute over signal level measurements, cable operators are expected to employ sound engineering measurement practices. Therefore, signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when

¹ Although WYBE's petition was originally filed on February 23, 1993, it was not perfected and accepted for filing until April 16, 1993.

² WYBE identifies Suburban in its petition as generally serving Philadelphia, Pennsylvania; however, the Commission's records and Suburban's own statement indicate that Suburban serves Pottstown, Pennsylvania.

³ For VHF-TV stations, if the test results are less than -55 dBm for a VHF station, we believe that at least four readings must be taken over a two hour period. Where the initial readings are between -55 dBm and -49 dBm, inclusive, we believe that the readings should be taken over a 24 hour period, with measurements no more than 4 hours apart to establish reliable test results.

DA-93-1048

Federal Communications Commission

tests were done. When measured against these criteria, we conclude that the test submitted by Suburban is insufficient to demonstrate that WYBE's signal is not of "good quality" at the cable system's headend.

7. Further, we will generally not consider photographs, photographs of a video tape, or the video tape itself to establish the presence or absence of a good quality signal for must-carry purposes. We believe the videotaping, video playback equipment, television receiver as well as photographic equipment used may interject impairments (e.g., noise, equipment characteristics, color integration, etc.) which could make it difficult to judge whether the videotape or photograph accurately represents the station signal. Consequently, we will only consider such evidence as a supporting factor to properly performed engineering measurements.

8. Accordingly, the petition filed February 23, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, pursuant to Section 615(j)(3) (47 U.S.C. §35) of the Communications Act of 1934, as amended, and Suburban Cable TV Co., Inc. IS ORDERED to commence carriage of Station WYBE forty-six (46) days from the release date of this Order unless Suburban submits the engineering data required herein to support its assertion of poor signal quality from WYBE at Suburban's principal headend. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

PAM

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB 1 1993

IN REPLY REFER TO
4620-PP

Daniel del Solar, General Manager
Independence Public Media of
Philadelphia, Inc.
P. O. Box 11896
Philadelphia, Pennsylvania 19128

In re: Independence Public Media of
Philadelphia, Inc.
(WYBE)
CSR-3807-M; NJ0038

Dear Mr. del Solar:

On February 23, 1993, you filed a "Petition for Declaratory Ruling under §5 of the 1992 Cable Act", on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania. WYBE filed a complaint against Tri-County Cable for its failure to carry its signal on its system serving Salem, New Jersey. Subsequently, in a response dated May 18, 1993, Tri-County Cable requested dismissal of the petition stating that it intends to commence carriage of WYBE on June 2, 1993.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling, filed February 23, 1993, on behalf of WYBE, is dismissed.

Sincerely,

Ronald Parver
Chief, Cable Television Branch
Video Services Division
Mass Media Bureau

cc: Brian Conboy, Esq.

File 244

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 22 1993

IN REPLY REFER TO:
4620-PP

Daniel del Solar, General Manager
Independence Public Media of
Philadelphia, Inc.
P. O. Box 11896
Philadelphia, Pennsylvania 19128

In re: Independence Public Media
of Philadelphia, Inc.
(WYBE)
CSR-3808-M

Dear Mr. del Solar:

On February 23, 1993, you filed a "Petition for Declaratory Ruling under §5 of the 1992 Cable Act," on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania. WYBE filed a complaint against Metro Cable for its failure to carry its signal on its system serving Bryn Mawr, Pennsylvania. Subsequently, by letter dated June 2, 1993, you requested that this petition be rescinded as Metro Cable is a SMATV system and is not covered by the 1992 Cable Act.

In view of the foregoing, pursuant to §§0.283 and 76.8(a) of the Commission's Rules, the petition for declaratory ruling, filed February 23, 1993, on behalf of WYBE is dismissed.

Sincerely,

Ronald Parver
Chief, Cable Television Branch
Video Services Division
Mass Media Bureau

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

In re:

Complaint of Independence Public Media of Philadelphia, Inc.
against Wade Cablevision

CSR-3809-M
PA2894

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1993;

Released: July 23, 1993

By the Chief, Mass Media Bureau:

1. On March 8, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that Wade Cablevision ("Wade"), had declined to carry the station, even though Philadelphia, WYBE's city of license, is also the location of the system's principal headend and therefore WYBE, which is within 50 miles, is a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

2. On April 13, 1993, Wade filed an "Opposition" to this petition, in which it argues that even assuming WYBE is a qualified NCE station, its system, which has more than 36 usable activated channels, is currently carrying the following three other qualified NCE stations pursuant to the provisions of Section 76.56(a)(iii) of the Commission's Rules: WHYY-TV (Educ., Channel 12), Wilmington, Delaware; WNJS (Educ., Channel 23), Camden, New Jersey; and WLVT-TV (Educ., Channel 39), Allentown, Pennsylvania. It concludes, therefore, that since it is already meeting its carriage obligations, it is not required to carry Station WYBE.

3. In its reply to the opposition, filed April 23, 1993, WYBE states that although there is a discrepancy between Section 76.56(a)(iii) of the Commission's Rules and paragraph 11 of the *Report & Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993), it believes that Subsections (b)(3)(D) and (e) of §615 of the Cable Act support its contention that Wade is required to carry any local NCE station that requests carriage absent those stations that substantially duplicate a currently-carried station. Since Wade does not argue that WYBE duplicates existing programming, petitioner contends that Wade is required to carry its signal.

4. We agree with WYBE's argument. Wade cites Section 76.56(a)(iii) of the Commission's Rules² as its basis for not having to carry Station WYBE. However, Wade's reliance on the reading of this rule is in error. Section 76.56(a)(iii) requires that all cable systems with more than 36 channels must carry a *minimum* of three NCE channels, but it does not preclude requiring such a system to carry additional NCE channels. Indeed, paragraph 11 of the *Report & Order in MM Docket No. 92-259*, *supra*, specifically states: "[s]ystems with a capacity of more than 36 usable activated channels are *generally required* to carry the signals of *all* qualified local NCE stations requesting carriage" (emphasis supplied). The only exception to this requirement is when there is substantial programming duplication between local NCE stations.

5. In light of the foregoing, therefore, the complaint filed March 8, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Wade Cablevision IS ORDERED to commence carriage of Station WYBE forty-six (46) days from the date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.263 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ Although WYBE's petition was originally filed on March 8, 1993, it was not perfected and accepted for filing until April 16, 1993.

² "Systems with more than 36 usable activated channels shall be required to carry the signals of three qualified local NCE

educational television stations; however a cable system with more than 36 channels shall not be required to carry stations whose programming substantially duplicates the programming of another qualified local NCE station." See 47 C.F.R. §76.56(a)(iii).

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUL 15 1993

IN REPLY REFER TO:
4620-PP

Daniel del Solar, General Manager
Independence Public Media of
Philadelphia, Inc.
P. O. Box 11896
Philadelphia, Pennsylvania 19128

In re: Independence Public Media of
Philadelphia, Inc.
(WYBE)
CSR-3835-M; PA1096

Dear Mr. del Solar:

On February 23, 1993, you filed a "Petition for Declaratory Ruling under §5 of the 1992 Cable Act," on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania. WYBE filed a complaint against Oxford Valley Cablevision for its failure to carry its signal on its system serving Bensalem, Pennsylvania. Subsequently, by letter dated June 24, 1993, you requested dismissal of this petition as Oxford Valley Cablevision is now carrying WYBE.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling, filed February 23, 1993, on behalf of WYBE, is dismissed.

Sincerely,



Ronald Parver
Chief, Cable Television Branch
Video Services Division
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 23 1993

IN REPLY REFER TO:
4620-PP

Peter H. Doyle, Esq.
Arter & Hadden
1801 K Street, N. W.
Suite 400K
Washington, DC 20006-1301

In re: Independence Public Media
of Philadelphia, Inc.
(WYBE)
CSR-3836-M; PA1846

Dear Mr. Doyle:

On February 23, 1993, Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, filed a petition for declaratory ruling claiming that Harron Cable Television Company had declined to carry WYBE on its system serving Malvern, Pennsylvania. Subsequently, by letter dated June 18, 1993, you requested dismissal of the petition as Harron has agreed to carry the station.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling, filed February 23, 1993, on behalf of WYBE, is dismissed.

Sincerely,

Ronald Parver
Chief, Cable Television Branch
Video Services Division
Mass Media Bureau

PPUSEY:gc/VS:MMB
yph
SJB
M

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 23 1993

IN REPLY REFER TO:
4620-PP

Peter H. Doyle, Esq.
Arter & Hadden
1801 K Street, N. W.
Suite 400K
Washington, DC 20006-1301

In re: Independence Public Media
of Philadelphia, Inc.
(WYBE)
CSR-3837-M; NJ0269

Dear Mr. Doyle:

On February 23, 1993, Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, filed a petition for declaratory ruling claiming that Storer Cable Communications, Inc. had declined to carry WYBE on its system serving Woodbury, New Jersey. Subsequently, by letter dated June 18, 1993, you requested dismissal of the petition as Storer has agreed to carry the station.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling, filed February 23, 1993, on behalf of WYBE, is dismissed.

Sincerely,

Ronald Parver
Chief, Cable Television Branch
Video Services Division
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION

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

Roy J. Stewart
Chief, Mass Media Bureau

In re:

Complaint of Independence CSR-3838-M
Public Media of PA0806
Philadelphia, Inc.
against Cablevision of
Pennsylvania, Inc.

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 29, 1993; Released: August 6, 1993

By the Chief, Mass Media Bureau:

1. On February 23, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that Cablevision of Pennsylvania, Inc., operator of a cable television system serving Norristown, Pennsylvania, had declined to carry the station, even though Philadelphia is within fifty miles of the system's principal headend at Norristown, Pennsylvania, and it is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). No opposition to this petition has been filed.

2. On April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving *Turner Broadcasting System, Inc., et al., v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. April 8, 1993), which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and terminated the 120 day *Standstill Order* previously issued in this case.

3. Since no other pleadings were filed in this matter within the fifteen (15) day period specified by the Commission in its Public Notice, Mimeo No. 32419 (released March 26, 1993), the complaint filed February 23, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Cablevision of Pennsylvania, Inc. IS ORDERED to commence carriage of WYBE forty-six (46) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

¹ Although WYBE's petition was originally filed February 23, 1993, it was not perfected and accepted for filing until May 27,

1993.



ARTER & HADDEN

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SEP - 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
Writer's Direct Dial Number:

(202) 775-7117

September 1, 1993

VIA HAND DELIVERY

**William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554**

**Attn: Ronald Parver, Chief
Cable Television Branch**

**Re: Voluntary Dismissal of Cable Carriage Complaint
CSR-4006-M (Jackson Township, N.J.)**

Dear Mr. Caton:

Independence Public Media of Philadelphia, Inc., the licensee of television broadcast station WYBE, Channel 35, Philadelphia, Pennsylvania ("WYBE"), by its attorneys, hereby requests the partial dismissal of the above-referenced June 29, 1993 petition for declaratory ruling. The petition requests that the Commission find that various Monmouth Cablevision Associates ("Monmouth") cable systems must carry WYBE pursuant to Section 5(j) of the Cable Consumer Protection Act of 1992. Monmouth has agreed to carry WYBE on its system serving Jackson Township, New Jersey. Accordingly, WYBE requests the dismissal of this aspect of the petition.

This request does not affect those portions of WYBE's petition concerning the Monmouth systems serving Lakewood Township, New Jersey, Howell Township, New Jersey, Upper Freehold, New Jersey and Millstone Township, New Jersey.

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925 Euclid Avenue, Suite 1100
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**IN LOS ANGELES
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LAWLER, FELIX & HALL
700 South Flower Street, Suite 30
Los Angeles, California 90017-41
213/629-9300**

ARTER & HADDEN

William F. Caton
September 1, 1993
Page 2

If additional information is desired, please contact the undersigned.

Very truly yours,



Peter H. Doyle

cc: Monmouth Cablevision Associates
Celeste Fasone, Director
The Board of Regulatory Commission

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

In re:

Complaint of Independence CSR-4058-M
Public Media of Philadelphia
Inc. against Tele-Media Corp.

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 1994;

Released: June 7, 1994

By the Chief, Cable Services Bureau

1. On June 29, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that Tele-Media Corporation ("Tele-Media") had declined to carry the station even though Philadelphia is within fifty miles of the system's headend at Chesapeake City, Maryland, and it is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) [1992 Cable Act]. No opposition to this petition has been filed.

2. Station WYBE's petition establishes that it is entitled to carriage on the Chesapeake cable system, and it has requested carriage of its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed June 29, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, in accordance with §615(j) (3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Tele-Media Corporation IS ORDERED to commence carriage of Station WYBE forty-five days (45) from the release of this Order. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

¹ Although WYBE's petition was originally filed on June 29, 1993, it was not perfected and accepted for filing until Septem-

ber 9, 1993.

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

In re:

Complaint of Independence
Public Media of Philadelphia
Inc. against TCI Cablevision
of Maryland

CSR-4059-M
MD00047

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: May 5, 1994;

Released: June 7, 1994

By the Chief, Cable Services Bureau:

1. On June 29, 1993,¹ a petition on behalf of Independence Public Media of Philadelphia, Inc., licensee of Television Broadcast Station WYBE (Educ., Ch. 35), Philadelphia, Pennsylvania, was filed with the Commission claiming that TCI Cablevision of Maryland ("TCI") had declined to carry the station even though Philadelphia is within fifty miles of the system's headend at Elkton, Maryland, and it is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) [1992 Cable Act]. No opposition to this petition has been filed.

2. Station WYBE's petition establishes that it is entitled to carriage on the Elkton cable system, and it has requested carriage of its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed June 29, 1993, by Independence Public Media of Philadelphia, Inc. IS GRANTED, in accordance with §615(j) (3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Maryland IS ORDERED to commence carriage of Station WYBE forty-five days (45) from the release of this Order. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief
Cable Services Bureau

¹ Although WYBE's petition was originally filed on June 29, 1993, it was not perfected and accepted for filing until Septem-

ber 9, 1993.