

COPY

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

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In re Matter of)
George S. Flinn, Jr.)
v.)
Comcast)
Request for Mandatory Carriage of Television)
Station WFBD-DT, Destin, Florida)
(Facility ID 81669))
To: The Chief, Policy Division)
Media Bureau)

CSR-8608-M

MAR 28 2012

Federal Communications Commission
Bureau / Office

12-87

Complaint

George S. Flinn, Jr. (hereinafter "Flinn"), by his attorney and pursuant to Sections 76.7 and 76.61 of the Commission's rules and regulations, hereby respectfully submits the subject Complaint directed to Comcast pertaining to Comcast's failure to carry WFBD-DT, Destin, Florida on its cable television system(s) serving the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA.

A. Background

1. Flinn is the licensee of WFBD-DT, a local commercial television broadcast station licensed to Destin, Florida.

2. Pursuant to Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Federal Communications Commission

("Commission") in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues ("*Must Carry Order*"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.

3. WFBD-DT is licensed to Destin, Florida, which is in the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA. Comcast operates a cable television system(s) in Mobile, Alabama, which is also in the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA.

4. By letter dated September 19, 2011, Flinn timely sought carriage of WFBD-DT on Comcast's cable system(s) but received no response. Consequently, on February 09, 2012, Flinn forwarded written notification to Comcast pursuant to Section 76.61(a)(1) of the Commission's Rules and Regulations (see Attachment A hereto) which contained the following:

- Recognition that Comcast is not currently carrying the broadcast signal of WFBD-DT, Destin, Florida.
- Notification to Comcast, in writing, of its failure to carry WFBD-DT and the reasons Flinn believes that the cable operator is obligated to carry the signal of WFBD-DT, Destin, Florida.
- The reasons Flinn and WFBD-DT, Destin, Florida believe that Comcast has failed to meet its carriage obligations.
- A written demand pursuant to Sections 76.55 and 76.56 of the Commission's rules and regulations that Comcast commence immediate carriage of WFBD-DT, Destin, Florida on its cable system(s) located in the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA.

- ❑ Notification that, should Comcast be unable to receive a good quality WFBD signal (as defined by the FCC's rules) at all of Comcast's principal headends in the DMA, WFBD agrees to be responsible for the costs of delivering to those systems a good quality signal via alternative means pursuant to 47 C.F.R. 76.55(c)(3). Consistent with the foregoing, WFBD arranged for the employment of a fiber feed to ensure a "good quality" signal at the Comcast headend (again, at WFBD's expense).
- ❑ A request, consistent with Section 76.61 of the Commission's rules and regulations, that Comcast forward in writing within thirty days of Flinn's February 09, 2012 notification letter either (a) the date on which Comcast would commence carriage of WFBD-DT, Destin, Florida or (b) the reasons for believing that it is not obligated to carry WFBD-DT's signal.

5. In a letter dated March 9, 2012, Comcast denied Flinn's carriage request, citing signal measurements which preliminarily indicate "that WFBD does not deliver a good quality over-the-air signal to either of Comcast's principal headend facilities in the DMA" (see Attachment B hereto). Comcast's March 9, 2012 letter ignored Flinn's affirmative representation that "should Comcast be unable to receive a good quality WFBD signal (as defined by the FCC's rules) at all of Comcast's principal headends in the DMA, WFBD agrees to be responsible for the costs of delivering to those systems a good quality signal via alternative means pursuant to 47 C.F.R. 76.55(c)(3)".

6. As Comcast is aware from a previous FCC decision squarely on point (i.e., granting carriage to a similarly situated television station from the same county as WFBD and involving Comcast's cable systems in the Mobile, AL-Pensacola [Ft. Walton Beach], Florida DMA), the use of alternative means (in this case fiber) to deliver a "good quality signal" is wholly within the FCC's rules (see Attachment C hereto).

B. Satisfied Elements of Complaint

7. Section 76.61 of the Commission's rules and regulations states in pertinent part as follows:

(1) Whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57 of the rules, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

(2) The cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules.

8. As demonstrated in Attachment A hereto, Flinn gave Comcast proper notification under Section 76.61. In spite of Flinn's unequivocal commitment to be responsible for the costs of delivering to Comcast's cable systems a good quality WFBD signal via alternative means pursuant to 47 C.F.R. 76.55(c)(3), Comcast has refused to commence carriage of WFBD-DT, Destin, Florida.

9. The subject Complaint is filed within the 60 day period following Comcast's letter of March 9, 2012. As such, the subject Complaint is considered timely filed under the provisions of Section 76.61(a)(5).

10. Section 76.61(a)(3) states as follows:

A local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator may file a complaint with the Commission in accordance with the procedures set forth in §76.7 of this part. In addition to the requirements of §76.7 of this part, such complaint shall specifically:

(i) Allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(ii) Be accompanied by the notice from the complainant to the cable television system operator, and the cable television system operator's response, if any. If no timely response was received, the complaint shall so state.

(iii) Establish the complaint is being filed within the sixty-day deadline stated in paragraph (a)(5) of this section.

11. Flinn has satisfied the factual and procedural requirements of Section 76.61(a)(3) and, as such, the relief sought by Flinn is appropriate.

C. Summary

WFBD-DT is being carried by every other major satellite and cable provider in the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA (including DISH, DIRECTV and Mediacom).¹ It is perplexing that Comcast would choose to refuse carriage of WFBD-DT when it has actual knowledge of the Commission's legal position, both in the subject DMA (i.e., from the WPAN (TV) decision referenced herein whereby the FCC ordered the carriage of another station in the DMA under the same circumstances) and nationally in other instances where Comcast has carried television stations in a DMA via alternative means (e.g., fiber). Perhaps Comcast is reticent to bump another programmer off of Channel 48 or otherwise rearrange its channel lineup. Perhaps, in light of its merger with NBC, Comcast desires to protect another program provider

¹ It is important to note that in the case of DISH, DIRECTV and Mediacom, WFBD provided (at its own cost) a good quality signal via alternative means (i.e., fiber) pursuant to 47 C.F.R. 76.55(c)(3). This alternative fiber solution is exactly what was proposed to Comcast by Flinn.

which may be impacted by WFBD's programming. Perhaps it is a concern that WFBD may impact Comcast's advertising revenue stream in the market. Maybe Comcast is trying to direct WFBD toward a path of least resistance such as leased access. At the end of the day, Comcast's possible motivations are irrelevant. WFBD-DT has the legal right to be carried and no opaque backroom reasoning will alter that reality.

One final point should be noted. As "justification" for its failure to carry WFBD-DT, Comcast attacks WFBD-DT's proper inclusion in the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA and threatens to challenge the makeup of the DMA before the FCC.² As Comcast is aware, there is an FCC procedure available to seek modification of a television market. If Comcast has an issue with the makeup of the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA, it should avail itself of that remedy (and allow affected parties to comment thereon). Comcast's knowing employment of such an unsupported and vague threat to deny WFBD-DT carriage is legally and factually improper.

Wherefore, based on the foregoing, it is respectfully requested (a) that a determination be rendered by the Commission that Comcast has failed to meet its must-carry obligations with respect to carriage of WFBD-DT and (b) that the Commission order Comcast, within 45 days of such order, to commence carriage of WFBD-DT, Destin, Florida on its above-referenced cable system(s) serving the Mobile, AL-Pensacola (Ft. Walton Beach), Florida DMA.

² See Comcast's March 9, 2012 carriage denial letter (Attachment B hereto).

Respectfully submitted,

GEORGE S. FLINN, JR.

By: Stephen C. Simpson
Stephen C. Simpson
His Attorney

1250 Connecticut Avenue, NW
Suite 200
Washington, D.C. 20036
(202) 408-7035

ATTACHMENT A

February 9, 2012

WFBD-DT
c/o Flinn Broadcasting Corp.
6080 Mt. Moriah Ext.
Memphis, TN 38115
(901) 375-9324

Mr. Jerome Butler, General Manager
Comcast Cablevision
3248 Springhill Ave.
Mobile, AL 36607

Dear Mr. Butler:

As your records will reflect, on September 19, 2011, George S. Flinn, Jr. (hereinafter "Flinn"), licensee of television station WFBD-DT, Destin, Florida, sent a certified letter to Comcast (in accordance with 47 C.F.R. 76.64(f)(2) of the FCC's carriage election rules) electing mandatory carriage on Comcast's cable system(s) serving the Mobile, AL-Pensacola (Ft. Walton Beach), FL DMA for the three year election cycle beginning January 1, 2012 and ending December 31, 2014.

As of this date, Comcast is not carrying the broadcast signal of WFBD-DT, Destin, Florida. As such, it is respectfully requested again, pursuant to Sections 76.55 and 76.56 of the Commission's rules and regulations, that Comcast commence immediate carriage of WFBD-DT, Destin, Florida on its cable system(s) located in the Mobile, AL-Pensacola (Ft. Walton Beach), FL DMA. Section 75.61 of the Commission's rules and regulations states in pertinent part as follows:

(1) Whenever a local commercial television station or a qualified low power television station believes that a cable operator has failed to meet its carriage or channel positioning obligations, pursuant to Sections 76.56 and 76.57 of the rules, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or position such signal on a particular channel.

(2) The cable operator shall, within 30 days of receipt of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of the must-carry rules. If a refusal for carriage is based on

the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue, in its response.

As noted in Flinn's initial September 19, 2011 carriage election notice to Comcast:

Please be advised that in the event you are unable to receive a good quality WFBD signal (as defined by the FCC's rules) at all of your principal headends in the DMA, WFBD agrees to be responsible for the costs of delivering to those systems a good quality signal via alternative means pursuant to 47 C.F.R. 76.55(c)(3). If there is an insufficient signal at a particular principal headend, please contact the undersigned at fred@flinn.com or (901) 375-9324 to discuss and finalize the technical arrangements that we have ready to enable such delivery.

Consistent with the foregoing (and in the event that Comcast preliminarily determines that there is an insufficient over-the-air WFBD signal at the applicable headend), WFBD has arranged for the employment of a fiber feed to ensure a "good quality" signal at the Comcast headend. Jim Sfakianos at Southern Light Fiber (850-449-9300) should be able to answer any questions related to the fiber setup. For answers to general technical questions, please contact our engineer: Bernie O'Brien (731-695-1714; bernieob@earthlink.net).

Letter to Comcast
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February 8, 2012

We look forward to working with Comcast regarding timely carriage of WFBD-DT, Destin, Florida.¹ Should you have any questions concerning this matter, please do not hesitate to contact me at the above-referenced address, by email (fred@flinn.com) or telephone (901-375-9324).

Sincerely,

A handwritten signature in cursive script that reads "Fred Flinn".

Fred R. Flinn

¹ At a minimum (and consistent with Section 76.61 of the Commission's rules and regulations), please forward in writing within thirty days of your receipt of the subject letter either (a) the date on which you have commenced or anticipate commencing carriage of WFBD-DT, Destin, Florida or (b) the reasons for believing that you are not obligated to carry WFBD-DT's signal.

ATTACHMENT B



March 9, 2012

Mr. Fred R. Flinn
WFBD (TV)
c/o Flinn Broadcasting Corp.
6080 Mt. Moriah Ext.
Memphis, Tennessee 38115

Via Overnight Mail & e-mail
fred@flinn.com

Re: Must-Carry Request WFBD (TV)

Dear Mr. Flinn:

This letter is in response to your February 9, 2012 correspondence requesting carriage of WFBD (TV), channel 48, Destin, Florida on Comcast cable systems serving communities in the Mobile-Pensacola (Ft. Walton Beach) Designated Market Area (the "DMA").

As you know, federal law requires a television station that has elected must-carry status with respect to any cable system to deliver a "good quality signal" to the principal headend of such cable system. The attached signal measurement forms indicate that WFBD does not deliver a good quality over-the-air signal to either of Comcast's principal headend facilities in the DMA. Accordingly, Comcast does not believe that WFBD is entitled to mandatory carriage on either of the cable systems at this time and hereby denies the station's request for carriage.

In addition to its failure to provide an over-the-air signal of good quality to the cable communities at issue, the circumstances appear to meet the criteria established by federal law to redraw and reduce WFBD's must-carry boundaries to make them congruous with market realities. Accordingly, Comcast reserves any and all of its rights, including but not limited to the right to seek a market modification at the FCC in order to exclude these cable communities from WFBD's must-carry market.

Please let me know if you have any questions.

Sincerely,

Michael Nissenblatt

cc: Mr. Stuart Bainter, WFBD-DT (via e-mail: *sbainter@blabtv.com*)
Ms. Patricia Collins, Comcast Cable-Delta Region

ATTACHMENT C

Franklin Media, Inc. v. Comcast Cable Communications, Inc.

**Request for Mandatory Carriage of Television Station WPAN-TV, Walton
Beach, Florida**

**19 FCC Rcd 24086
(December 16, 2004)**

DA 04-3911

CSR-6380-M

Adopted: December 14, 2004

Released: December 16, 2004

MEMORANDUM OPINION AND ORDER

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Franklin Media, Inc. ("Franklin"), licensee of television broadcast station WPAN-TV, Walton Beach, Florida ("WPAN" or the "Station") filed the above-captioned must carry complaint against Comcast Cable Communications, Inc. ("Comcast"), for failing to carry WPAN on its cable television system serving Mobile, Alabama in the Pensacola/Mobile DMA. Comcast filed an opposition to which Franklin replied. For the reasons indicated below, the must carry complaint filed by Franklin is granted.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations, such as WPAN, are entitled to assert mandatory carriage rights on cable systems located within the station's market.¹ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.² The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Section 614 of the Communications Act and the Commission's rules also provide that a commercial television station asserting must carry rights is required to deliver a good quality signal to the principal headend of a cable system. Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is

-45dBm.³

4. With regard to channel positioning rights, Section 614(b)(6) of the Communications Act and Section 76.57 of the Commission's rules provide commercial television stations electing must carry status with three channel positioning options. A station may elect to be carried on: (1) the channel number on which the station is broadcast over the air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992. The Communications Act and the Commission's rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.⁴

III. DISCUSSION

5. Franklin explains in its complaint that "it is entitled to carriage on all cable systems within the DMA" and that it sent a letter to "Comcast asking for carriage on the Comcast systems within the DMA."⁵ Comcast provided a copy of this letter. This letter states that it is a "Request for Must Carry Status on Comcast Cable in Mobile, Alabama." Further, Franklin states in its letter that "We are prepared at no cost to you to provide you a qualified signal via fiber optic.... The only need we have is a place to rack our equipment which is approximately the dimensions of microwave of fiber optic receivers."⁶ Franklin also provided a copy of Comcast's letter responding to this request. Comcast indicates in its reply that Franklin's station, WPAN, is not entitled to must-carry status on its cable system because it does not deliver a good quality signal to its Mobile, Alabama headend.⁷ Franklin states in its complaint that after it received this letter, it communicated with Comcast to explain again that it was willing "to provide, at [Franklin's]... expense. A fiber optic signal... to overcome any perceived signal strength" problems, and Comcast verbally responded that it "still refused to provide the required carriage."⁸

6. In its opposition, Comcast explains that WPAN does not deliver a signal of sufficient strength to the principal headend of its Mobile, Alabama cable system. Comcast, therefore, indicates it is under no legal obligation to carry WPAN.⁹ In support of this position, Comcast attached signal strength tests.¹⁰ Comcast also states that although Franklin's complaint appeared to request carriage on all of Comcast's cable systems in the Pensacola/Mobile DMA, the letter it sent to Comcast, which was attached to its complaint, only requested carriage on Comcast's Mobile system. Comcast further explains that Franklin has not provided written notification to Comcast, as required by the Commission, of its failure to meet its must carry obligations concerning WPAN on any other Comcast cable system in the DMA.¹¹

7. Franklin in its reply, states "Without conceding the accuracy of the signal strength readings presented in the Opposition, WPAN has offered to, and will, at its own expense, deliver a good quality signal to Comcast through fiber optics. However, Comcast has not agreed to permit WPAN to install the necessary equipment to fulfill this requirement. Thus, failure to provide an over-the-air signal is not an issue." Franklin further states that the Commission requires a cable system to carry a television station if it provides a good quality signal by alternative means.¹²

8. Franklin does not dispute Comcast's claim that Franklin's complaint only presents a valid claim for carriage on Comcast's Mobile, Alabama cable system. With regard to this system,

Pike & Fischer's COMMUNICATIONS REGULATION

Comcast presented signal strength tests which it claims proved that WPAN did not deliver an adequate strength over-the-air signal. Franklin, however, has argued that its possible failure to deliver an adequate over-the-air signal should not be an issue because it has offered to deliver, at its own expense, a good quality signal by fiber optics to the principal headend of Comcast's cable system serving Mobile. We will, therefore, grant Franklin's complaint that Comcast carry WPAN on its Mobile cable system when Franklin delivers a good quality signal to the system's principal headend, and that this may be accomplished by alternative means such as by fiber optics.¹³

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534(d)(3), that the must carry complaint filed by Franklin Media, Inc. (CSR-6380-M) licensee of television broadcast station WPAN, Walton Beach, Florida against Comcast Cable Communications, Inc. **IS GRANTED**. Comcast Cable Communications, Inc. **IS ORDERED** to commence carriage of WPAN-TV on its cable system serving Mobile, Alabama sixty (60) days from the date on which WPAN-TV delivers a good quality signal to the cable system's principal headend.

10. **IT IS FURTHER ORDERED** that WPAN shall be carried on the channel of the cable system as specified by section 76.57(a) and (d) of the Commission's rules, 47 C.F.R. §76.57(a) and (d).

11. This action is taken under authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

End Notes

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. §76.55(e).

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

4 47 U.S.C. §534(b)(6); 47 C.F.R. §76.57.

5 Complaint at 2.

6 *Id.* at Attachment A.

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7 *Id.* at Attachment B.

8 *Id.* at 2.

9 Opposition at 2.

10 *Id.* at Exhibit 1.

11 *Id.* at 1 n.1.

12 Opposition at 1-2.

13 47 C.F.R. §76.55(c)(3); *see also Matter of Educational Public TV Corporation v. RCN-BecoCom*, 19 FCC Rcd 16280, 16283-4 (2004).

Certificate of Service

I hereby certify that a copy of the foregoing document was this 28th day of March, 2012 sent by First Class U.S. mail, postage prepaid, to the following:

Jerome Butler, General Manager
Comcast Cablevision
3248 Springhill Ave.
Mobile, AL 36607

Michael Nissenblatt
Comcast Corporation
1701 John F. Kennedy Boulevard
Philadelphia, PA 19103

Stephen A. Simpson