

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

In the Matter of:)	
)	
SAH Houston License Corporation)	
)	CSR-5502-M
v.)	
)	
Tri-Cities Cablevision)	
)	
Request for Mandatory Carriage of Television Station KZJL-TV, Houston, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: May 16, 2000

Released: May 17, 2000

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

I. INTRODUCTION

1. SAH Houston License Corporation (“SAH”), licensee of television broadcast station KZJL-TV, Houston, Texas (“KZJL” or the “Station”), has filed a must carry complaint with the Commission pursuant to Sections 76.7 and 76.61 of the Commission’s rules, claiming that Tri-Cities Cablevision (“Tri-Cities”) has failed to commence carriage of KZJL on Tri-Cities’ system serving Cleveland, Texas and the surrounding areas (“the cable communities”).¹ SAH requests that the Commission order Tri-Cities to commence carriage of KZJL on Channel 61 of the cable system serving the cable communities. No opposition to the complaint was received.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act 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 are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹ 47 C.F.R. § 76.7 and 47 C.F.R. § 76.61. SAH states that the system at issue serves the City of Cleveland (TX0409) and the City of North Cleveland (TX2214), Texas. Complaint, Exhibit 1.

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ 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,
(continued...)

others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing is calculated.⁴

III. DISCUSSION

3. In support of its request, SAH asserts that KZJL is entitled to mandatory carriage on the Tri-Cities system serving the cable communities because it is a qualified local commercial station as defined by the Commission's must carry rules. SAH explains that KZJL is licensed to Houston, Texas, which is in the Houston DMA. SAH states that Tri-Cities operates a cable television system serving the cable communities, which is also within the Houston DMA. SAH contends that because KZJL is located within the same DMA as Tri-Cities, it is entitled to mandatory carriage on the system serving the cable communities.⁵ SAH asserts that by letter dated September 29, 1999, it informed Tri-Cities that KZJL was electing must carry status for the election period ending December 31, 2002, and asked that Tri-Cities carry the Station's signal on the cable system in question.⁶ SAH points out that the September 29 letter included KZJL's commitment to Tri-Cities to acquire and install the necessary equipment, if needed, to deliver a good quality signal to the system headend.⁷ SAH states that on November 19, 1999 it sent a letter notifying Tri-Cities that it was in violation of the Commission's must carry rules because it was not carrying the KZJL signal despite the fact that the Station had elected mandatory carriage.⁸

4. Under the Commission's rules, cable operators have the burden of showing that a commercial station located in the same television market as a cable operator is not entitled to mandatory carriage.⁹ Tri-Cities did not file an opposition to SAH's must carry complaint nor did it respond within 30 days to SAH's November 19, 1999 letter.¹⁰ Tri-Cities, therefore, has not presented any evidence that KZJL is not entitled to carriage on its cable system.

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commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided Arbitron's "Areas of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999)(*"Market Modification Final Report and Order"*).

⁴ For a more complete description of how counties are allocated, see Nielsen Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵ See n. 1, *supra*.

⁶ Petition at 2 and Exhibit 2.

⁷ Petition at 1-2 and Exhibit 2.

⁸ Petition at 2 and Exhibit 3.

⁹ See *Must Carry Order* at 2990.

¹⁰ See 47 C.F.R. § 76.61(a)(2).

5. We find that the representations made by SAH demonstrate that KZJL is a local full power commercial television station qualified for carriage on Tri-Cities' cable system serving the City of Cleveland and the City of North Cleveland in Liberty County, Texas. Both KZJL and Tri-Cities are located in the Houston DMA. Concerning SAH's channel positioning request for KZJL, we find that it properly requested carriage on channel 61 of Tri-Cities' cable system, the same channel number on which KZJL is broadcast over-the-air. Pursuant to the Commission's rules, cable operators must comply with the channel positioning requirements absent a compelling technical reason.¹¹

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the complaint filed by SAH Houston License Corporation is **GRANTED**. Tri-Cities Cablevision **IS ORDERED** to commence carriage of television station KZJL-TV on channel 61 of its cable system serving the City of Cleveland and the City of North Cleveland, located in Liberty County, Texas within sixty (60) days from the date of this *Order*.

7. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.¹²

FEDERAL COMMUNICATIONS COMMISSION

Steven Broeckaert, Acting Chief
Consumer Protection and Competition Division
Cable Services Bureau

¹¹ 47 C.F.R. § 76.57; *see Must Carry Order* at 2988.

¹² 47 C.F.R. § 0.321.