

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

In the Matter of:
Hispanic Keys Broadcasting Corp.
v.
Adelphia Cable Partners, L.P. d/b/a Adelphia
Communications
For Carriage of WWTU(TV), Key West, Florida,
in Homestead, Key Biscayne, North Dade County
and South Dade County, Florida
CSR 5565-M

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2000

Released: August 15, 2000

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

I. INTRODUCTION

1. Hispanic Keys Broadcasting Corp. ("Hispanic Keys"), licensee of commercial television station WWTU(TV), Key West, Florida ("WWTU"), filed a complaint pursuant to Section 614 of the Communications Act, as amended, and Sections 76.7 and 76.61(a) of the Commission's Rules, claiming entitlement to mandatory carriage of WWTU in the communities of Homestead, Key Biscayne, North Dade, and South Dade, Florida, (the "Communities") served by cable systems of Adelphia Cable Partners, L.P. d/b/a Adelphia Communications ("Adelphia"). Adelphia filed an opposition to the complaint, and Hispanic Keys filed a reply.

II. BACKGROUND

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. Until January 1, 2000, Section 76.55(e) of the Commission's rules provided that 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 Designated Market Areas ("DMAs"). For the must-carry/retransmission consent elections that took place on October

147 U.S.C. § 534.

247 C.F.R. §§76.7 & 76.61(a).

3See 47 U.S.C. §534(h)(1)(C).

1, 1999, commercial television stations were required to make their elections based on DMAs.⁴

3. The Commission's must carry rules provide that cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁵ One method of doing so is for a cable operator to establish that a subject station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁶ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a station may provide a cable operator with specialized equipment, at the station's expense, which will improve the station's signal to an acceptable quality at a cable system's principal headend.⁷

III. DISCUSSION AND ANALYSIS

4. Hispanic Keys provided information establishing that WWTU is a full power commercial television station licensed to operate on Channel 8 at Key West, Florida, as defined in the Commission's rules.⁸ Hispanic Keys also established that WWTU and each of the Communities are located within the Miami, Florida DMA, and that carriage of WWTU would not cause increased copyright liability for Adelphia.⁹ Hispanic Keys notified Adelphia of its must carry election, requested carriage on Adelphia's systems in the Communities, and notified Adelphia of its failure to meet its carriage obligations.¹⁰ Hispanic Keys also made a commitment in the Complaint to be responsible for and provide at its own expense such equipment as will reasonably be necessary to provide a good quality signal to the principal headends of Adelphia's cable systems serving the communities in cases where the station failed to deliver a good quality signal to those headends.¹¹

5. Adelphia in opposition provided results of tests of the strength of the WWTU signal at the principal headends of its cable systems serving the Communities, which showed that WWTU failed to provide a signal of at least -49 dBu, required for a VHF station operating on channel 8, at either of Adelphia's principal headends at issue.¹² Adelphia also asserted that Hispanic Keys has made no specific proposals or taken any steps toward providing for the delivery of a good quality signal to its cable systems'

⁴See *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) ("Modification Final Report and Order").

⁵*Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Report and Order, 8 FCC Rcd 2965 ("Must Carry Order").

⁶47 C.F.R. § 76.55(c)(3).

⁷*Must Carry Order*, 8 FCC Red at 2991.

⁸47 C.F.R. § 76.55; Complaint at 1-3.

⁹See 47 U.S.C. § 534(h)(1); 47 C.F.R. § 76.55(c). See also 17 U.S.C. § 111(f).

¹⁰Complaint at 2-3 and Exhibit 2. Adelphia submitted no response to either the election notice or the demand for carriage. *Id.*

¹¹*Id.* at 3-4.

¹²Opposition at 2 and Exhibit B. See 47 U.S.C. §534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

headends. Nonetheless, Adelphia stated that should Hispanic Keys take steps to improve WWTU's signal to meet the 1992 Cable Act's requirements and otherwise be qualified for carriage on its systems, it will cooperate and comply with the Commission's must carry rules.

6. The complaint establishes that WWTU and the Communities served by Adelphia's cable systems are located within the same television market, namely the Miami, Florida DMA, and that carriage of WWTU will not cause an increase in the cable systems' copyright liability. Accordingly, we find that WWTU is a local television station qualified under the provisions of Section 76.55(c) of the Commission's rules for carriage on Adelphia's cable systems at issue here, provided it delivers a good quality signal to those cable systems' headends. However, we find that the signal test results provided by Adelphia establish an inadequate WWTU signal level at each of Adelphia's headends and conclude, therefore, that WWTU fails to deliver a good quality signal to Adelphia's cable systems' headends.

7. Although WWTU fails to provide a good quality signal to the headends of Adelphia's cable systems serving the communities at issue, Hispanic Keys made a commitment to provide at its own expense such equipment as will reasonably be necessary to provide a good quality signal to those headends where the station failed to deliver such a signal. Hispanic Keys proposes to provide such a signal either by means of low power television station W21AX, Miami, Florida or by means of fiber optic cable.¹³ Therefore, we find that Hispanic Keys has made an unqualified commitment to deliver an adequate signal to Adelphia's cable systems at issue and to pay any associated equipment costs, in accordance with Section 614(h)(1)(B)(iii) of the Communications Act of 1934.

IV. ORDERING CLAUSES

8. 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 Hispanic Keys Broadcasting Corp. in File No. CSR 5565-M **IS GRANTED**, and Adelphia Cable Partners, L.P. d/b/a Adelphia Communications shall commence carriage of television station WWTU(TV) on its cable systems serving the communities of Homestead, Key Biscayne, South Dade and North Dade (including the unincorporated area known as Liberty City, Florida) within sixty (60) days after Hispanic Keys delivers a good quality signal to Adelphia's cable systems' principal headends serving those communities.

9. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein, Chief
Consumer Protection and Competition Division
Cable Services Bureau

¹³Reply at 2. Hispanic Keys represents that it already provides a good quality signal by means of fiber optic cable to other cable systems in Florida's Dade and Broward counties. *Id.*

¹⁴47 C.F.R. § 0.321.