

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

In the Matter of:)	
)	
SAH Houston License Corporation)	
)	CSR 5464-M
v.)	
)	
Falcon Telecable)	

MEMORANDUM OPINION AND ORDER

Adopted: February 24, 2000

Released: February 28, 2000

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

I. INTRODUCTION

1. SAH Houston License Corporation, a wholly owned subsidiary of Shop At Home, Inc. ("Shop at Home"), licensee of commercial television station KZJL-TV 61 ("KZJL" or the "Station"), Houston, Texas filed a complaint pursuant to Sections 76.7 and 76.61 of the Commission's rules claiming mandatory carriage rights for KZJL on Falcon Telecable's ("Falcon") cable systems serving West Columbia, Wharton, Palacios, and Sweeny, Texas and the surrounding areas ("cable communities").¹ Falcon filed an opposition to the complaint, and Shop at Home filed a reply.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and the implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order ("*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 Nielson Media Research.³ A

¹47 C.F.R. § 76.7 and 47 C.F.R. § 76.61.

²8 FCC Rcd 2965, 2976-2977 (1993).

³Section 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). Until Jan. 1, 2000, Section 76.55(e) provided that the television market to be used to implement the mandatory carriage rules are the "areas of dominant influence" or ADIs published in the Arbitron audience research organization's 1991-1992 Television Market Guide. Effective January 1, 2000, Section 76.55(e) requires that a commercial broadcast television station's market shall be defined by DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their election 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).

DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ 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 our 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.⁶

III. DISCUSSION

4. In its complaint, Shop at Home asserts that Falcon has failed to carry KZJL despite the requirements of the must carry statutory provisions and the Commission's rules. Shop at Home submitted with its complaint copies of correspondence with Falcon showing that Shop at Home requested carriage of KZJL on the cable systems serving the communities at issue here.⁷ Shop at Home maintains that it did not receive a response to its request for carriage and filed the instant complaint to preserve its rights under the rules. Shop at Home's correspondence to Falcon further states that should the cable operator be unable to receive a quality signal off-air from KZJL, it is committed to purchasing the requisite equipment necessary to ensure the deliver a good quality signal to the cable systems.⁸ Shop at Home asserts that KZJL and Falcon's cable systems are all located in the Houston ADI and that carriage of KZJL will not increase copyright liability for the cable operator.⁹

5. Citing its own signal measurement survey, Falcon contends that the complaint should be dismissed because KZJL does not deliver a signal of sufficient strength to any of the four system headends at issue in this case.¹⁰ In reply, Shop at Home contends that the tests taken by Falcon are flawed and thus do not prove that KZJL does not deliver a good quality signal to the headends.¹¹ Further, Shop

⁴*Must Carry Order*, 8 FCC Rcd at 2990.

⁵47 C.F.R. § 76.55(c)(3).

⁶*Must Carry Order*, 8 FCC Rcd at 2991.

⁷Shop at Home Complaint at Exhibits 2-5.

⁸*Id.*

⁹At the time Shop at Home's must carry complaint was filed, a commercial television station's market was defined by its ADI. Effective Jan. 1, 2000, a commercial television station's market is defined by its DMA. *See* 47 C.F.R. § 76.55(e).

¹⁰Falcon's signal measurements were -26 dBm at the West Columbia headend, -22 dBm at the Wharton headend, -36 dBm at the Palacios headend, and -26 dBm at the Sweeny headend. Falcon Opposition at Exhibit 1.

¹¹Shop at Home Reply at 1.

at Home restates its commitment to install any and all equipment necessary to deliver a good quality KZJL signal to the cable systems.¹²

6. The complaint establishes that KZJL and the communities served by Falcon's cable systems are located within the Houston DMA and that carriage of KZJL will not cause any increase in the cable systems' copyright liability. Accordingly, we find that KZJL is a local television station qualified under the provisions of 47 C.F.R. § 76.55(c) for carriage on Falcon's cable systems at issue here, provided it delivers a good quality signal to those cable system headends.

7. We find, however, that station KZJL fails to provide a good quality signal to the headends of Falcon's cable systems at issue. The Commission's signal strength rules require that a UHF television broadcast station such as KZJL deliver to the cable operator's principal headend a signal of -45dBm.¹³ The signal strength survey results provided by Falcon show an inadequate signal strength level at every location tested. Moreover, we do not agree with Shop at Home that this survey does not reflect good engineering practices. Falcon's signal strength survey states the date the equipment was calibrated. Despite Shop at Home's assertions otherwise, we do not require specific documentation to substantiate the legitimacy of the equipment calibration date. Also, the survey indicates that the antenna was oriented properly, which we assume means that the antenna was peaked for maximum reception. With regard to Shop at Home's claim regarding loss over the transmission line, we agree that there are different models of transmission lines and line loss can vary.¹⁴ However, the use of testing tools and equipment is at the discretion of the cable operator, including the use of amplification, cable, and antenna, although the cable operator is obligated to use the same type of equipment to receive signals of similar frequency range, type or distance from the principal headend.¹⁵ Shop at Home does not argue that the cable used to test KZJL differs from the cable used to receive other similar signals.

8. Although KZJL fails to provide a good quality signal to the headends of Falcon's cable systems, Shop at Home has made a commitment to acquire and install any and all improvements and equipment necessary to deliver a good quality KZJL signal to the cable headends. The Commission stated in the *Must Carry Order* that

[I]t is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend. This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests

¹²*Id.* at 2.

¹³47 C.F.R. § 76.55(c).

¹⁴Shop at Home contends that Falcon should have performed its test using a transmission line with a lower loss per one hundred feet. Shop at Home Reply at Exhibit 1.

¹⁵The reference in § 614(h)(1)(B)(iii) of the Communications Act of 1934, as amended, 47 U. S. C. § 534, to measuring broadcast signals at the "... input terminals of the signal processing equipment..." means that signal level measurements should be taken at the first active device or input terminals of the signal processing equipment owned by the cable system, which would be after any equipment supplied by a television station, such as a preamplifier. See *CTV of Derry, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 3586, 3587 n.7 (Cable Serv. Bureau 1996).

that may be needed to determine whether the station's signal complies with the signal strength requirements. . .¹⁶

Thus, we grant Shop at Home's must carry complaint against Falcon conditioned upon KZJL delivering a good quality signal to Falcon's headends.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.55(c) and 76.61 (a)(2) of the Commission's rules, 47 C.F.R. §§ 76.55(c)(3) and 76.61(a)(2), the Petition for Special Relief [CSR-5464-M] filed by Shop At Home, Inc. against Falcon Telecable **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that Falcon Telecable **SHALL COMMENCE CARRIAGE** of the signal, KZJL-TV within sixty (60) days from the date that KZJL provides a good quality signal at Falcon's principal headends in West Columbia, Wharton, Palacios, and Texas. KZJL shall notify Falcon in writing of its carriage and channel position elections on Falcon's cable systems served by those principal headends within 30 days of providing a good quality signal, 47 C.F.R. §§ 76.56, 76.57 and 76.64(f) of the Commission's rules.

11. This action is taken pursuant to authority delegated by § 0.321, 47 C.F.R. § 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁶*Must Carry Order*, 8 FCC Rcd at 2991.