

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

In the Matter of:)	
)	
Gary M. Cocola)	
)	CSR-5457-M
Complaint for Carriage of KGMC(TV))	
Clovis, California)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 29, 2000

Released: March 31, 2000

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

I. INTRODUCTION

1. Gary M. Cocola, licensee of KGMC(TV) (Ch. 43), Clovis, California, has filed a must carry complaint, pursuant to Section 614 of the Communications Act,¹ as amended, and Sections 76.7 and 76.61(a) of the Commission's rules,² alleging that UACC Midwest, Inc. d/b/a AT&T Cable Services ("UACC Midwest") has denied carriage of KGMC(TV) on UACC Midwest's cable systems serving Merced and Los Banos, California, and neighboring communities (the "UACC Midwest cable communities").³ An opposition to the complaint was filed by Televents of San Joaquin, Inc. and UACC Midwest, Inc. ("Cable Operator"). KGMC(TV) filed a Reply.

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")*,⁴ 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

¹ 47 U.S.C. § 534.

² 47 C.F.R. §§ 76.7, 76.61(a).

³ The relevant communities in California include: Merced, Atwater, Castle Air Force Base, Merced County and Los Banos. See Complaint at 1, Exhibit 1.

⁴ 8 FCC Rcd 2965, 2976-2977 (1993).

Nielsen Media Research.⁵ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

III. DISCUSSION

3. In support of its request for carriage, KGMC(TV) states that the station meets the definition of a "local commercial television station"⁶ and therefore is eligible to invoke the mandatory carriage provisions of Section 614 of the Communications Act in the UACC Midwest cable communities.⁷ Specifically, KGMC(TV) states that: (1) KGMC(TV) and UACC Midwest's cable systems are located within the Fresno-Visalia, California, DMA; (2) UACC Midwest's cable systems will not incur copyright liability for the carriage of KGMC(TV); and (3) KGMC(TV) provides an adequate quality signal.⁸

4. We grant KGMC(TV)'s complaint. We find that the representations made by KGMC(TV) demonstrate that it is a local full-power commercial television station qualified for carriage on UACC Midwest's cable systems. Under 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 as a cable operator is not entitled to carriage.⁹ It is undisputed that all of the UACC Midwest cable communities are located within the Fresno-Visalia DMA, and, as such, all are located within the same television market as KGMC(TV). In addition, because KGMC(TV) is located within the same television market as the UACC Midwest cable communities, KGMC(TV) is a "local signal" under Section 111 of the Copyright Act.¹⁰ Therefore, carriage of KGMC(TV) would not expose UACC Midwest to any increased copyright liability.

5. With regard to the signal quality issue, KGMC(TV) contends that it is capable of delivering an adequate signal to UACC Midwest's headends. KGMC(TV) further states that, on

⁵ 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 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 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) now 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) ("Modification Final Report and Order").

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

⁷ KGMC(TV) states that it formally elected mandatory carriage on the UACC Midwest cable systems for the election period beginning January 1, 2000. See Letter from Todd Lopes, Vice President, KGMC(TV), to Sal Balesteri, General Manager, UACC Midwest, Inc. d/b/a AT&T Cable Services, September 16, 1999. Complaint at 2, Exhibit 3.

⁸ Complaint at 3-4.

⁹ See *Must Carry Order* at 2990.

¹⁰ 17 U.S.C. § 111.

October 26, 1999, a test conducted at the Merced headend indicated that KGMC(TV) “produced a signal strength of -7 dBmV,” which, KGMC(TV) argues, is well above the minimum required signal strength under the Commission’s must carry rules.¹¹ KGMC(TV) also states that it has purchased and provided to UACC Midwest a “Channel 43 antenna” for use at the Merced headend that should produce even better results.¹² According to KGMC(TV), even if the station is unable currently to deliver an adequate signal, it commits to purchasing and installing any additional equipment necessary to deliver an adequate signal.¹³

6. The Cable Operator responds by stating that KGMC(TV) does not deliver a signal of sufficient strength to the cable systems’ headends.¹⁴ The Cable Operator states that the Commission’s rules require that UHF stations, such as KGMC(TV), are required to provide a signal level of -45 dBm ($+3.75$ dBmV).¹⁵ Thus, the cable operator argues that the October 26, 1999 test referred to by KGMC(TV), which produced a signal strength of -7 dBmV, falls short of the required signal level.¹⁶ The Cable Operator states that it later conducted other signal strength tests (“December 1999 tests”) using the new antenna provided by KGMC(TV), but those tests resulted in lower signal strengths than those obtained in the previous test.¹⁷

7. In reply, KGMC(TV) argues that the October 26, 1999 signal strength test results conducted at the Merced headend should be disregarded because the test was conducted without the use of the specialized equipment provided by KGMC(TV).¹⁸ KGMC(TV) also contends that the Bureau should ignore the results of the December 1999 tests conducted by the Cable Operator because they are procedurally and technically flawed.¹⁹ KGMC(TV) argues that those tests were conducted unilaterally, without the presence of KGMC(TV) station personnel, and therefore KGMC(TV) cannot verify the results of the tests.²⁰ KGMC(TV) also argues that the December 1999 tests fail to satisfy technical

¹¹ Complaint at 4; *see* 47 C.F.R. § 76.55(c)(3).

¹² *Id.*

¹³ *Id.*

¹⁴ Cable Operator Opposition at 2; The Cable Operator notes that KGMC(TV) incorrectly assumes that the UACC Midwest cable communities are served by a single headend located in Merced. According to the Cable Operator, the cable communities are served by two separate headends located in the communities of Merced and Los Banos.

¹⁵ *Id.*; *see* 47 C.F.R. § 76.55(c)(3).

¹⁶ *Id.*

¹⁷ *Id.*, Exhibit 1.

¹⁸ KGMC(TV) Reply at 2. KGMC(TV) argues that these test results were conducted without the use of either the special receive antenna or the amplifier that KGMC(TV) purchased and provided to the Cable Operator for the purpose of such a test. We note that KGMC(TV) did not previously indicate in its Complaint that it provided an amplifier to the Cable Operator for use. The Complaint only notes that KGMC(TV) provided a Channel 43 antenna for use at the Merced headend. Complaint at 4. In addition, KGMC(TV) states in its reply pleading that it was first made aware of the existence of the Los Banos headend upon receipt of the Cable Operator’s Opposition pleading and, for this reason, KGMC(TV) did not request a signal test at the Los Banos headend. KGMC(TV) Reply at 2, n.1.

¹⁹ KGMC(TV) Reply at 3.

²⁰ *Id.*

requirements because measurements were taken over a period of one and one-half hours which falls short of the requirement to "take at least four readings . . . over a two hour period."²¹ In addition, KGMC(TV) states that the December 1999 test results indicate that the equipment provided by KGMC(TV), which included an amplifier, was not used, thus rendering the test results legally irrelevant.²² Moreover, KGMC(TV) argues that it currently commits, and has committed to the cable operator in the past, to purchase and install, at its own expense, the equipment necessary to deliver an adequate signal to the Cable Operator's headends.²³

8. In this matter, we believe that the Cable Operator has demonstrated that KGMC(TV) provides insufficient signal strength to the headends in question; however, we note that the station has agreed to provide specialized equipment -- for example, an amplifier -- and in fact already has done so, in order to deliver a good quality signal. The Commission has held that a cable operator cannot refuse to carry a television station that agrees to purchase and install, at its own expense, the equipment necessary to deliver an adequate signal to the operator's headend.²⁴ KGMC(TV), by already providing, and committing to provide any necessary additional equipment, satisfies its obligation to bear the costs associated with delivering a good quality signal to UACC Midwest's headends. Consequently, in view of the foregoing, we order UACC Midwest to carry KGMC(TV)'s signal.

IV. ORDERING CLAUSES

9. 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 Gary M. Cocola, licensee of KGMC(TV), Clovis, California, **IS GRANTED**. Televents of San Joaquin, Inc. and UACC Midwest, Inc. **ARE ORDERED** to commence carriage of KGMC(TV) within sixty (60) days after KGMC(TV) provides a good quality signal to Televents of San Joaquin, Inc.'s and UACC Midwest's headends.

²¹ *Id.* at 4. The Bureau has held that: "[G]ood engineering practices require that for UHF stations . . . if the initial test results show a signal of less than -51dBm, then at least four readings must be taken over a two hour period. If the initial readings show a signal between -51 dBm and -45dBm, inclusive, then six readings should be taken over a 24-hour period, with measurements no more than four hours apart to establish reliable test results." *Paxson Washington License, Inc.*, 14 FCC Rcd 11554, 1556-57 (1999).

²² KGMC(TV) Reply at 4.

²³ *Id.* at 5.

²⁴ *See, e.g., WMFP, Inc.*, 11 FCC Rcd 17264 (1996); *KSLs, Inc.*, 11 FCC Rcd 12718 (1996).

10. **IT IS FURTHER ORDERED** that KGMC(TV) shall notify Televents of San Joaquin, Inc. and UACC Midwest, Inc. in writing of its carriage and channel position elections (§§ 76.56, 76.57, and 76.64(f) of the Commission's rules) within thirty (30) days of providing a good quality signal.

11. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

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

²⁵ 47 C.F.R. § 0.321.