

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

In the Matter of:	)	
	)	
Pacifica Broadcasting Company v. Time	)	
Warner Entertainment Company, L.P.,	)	CSR-5639-M
d/b/a Oceanic Cable	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** [Click here to insert date]

**Released:** [Click here to insert date]

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

**I. INTRODUCTION**

1. Pacifica Broadcasting Company, licensee of television broadcast station KALO, Honolulu, Hawaii (“KALO”), filed the above-captioned complaint against Time Warner Entertainment Company, L.P., dba Oceanic Cable (“Oceanic”), for its failure to carry KALO on its cable system serving Honolulu, Hawaii and surrounding communities. An opposition to this petition was filed on behalf of Oceanic to which KALO replied.

**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.<sup>1</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>2</sup> A DMA is a geographic market designation that defines each television market exclusive of

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<sup>1</sup>8 FCC Rcd 2965, 1976-2977 (1993).

<sup>2</sup>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). 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*”).

others, based on measured viewing patterns.

### III. DISCUSSION

3. In support of its request, KALO states that it is an independent, full power television station licensed to Honolulu, Hawaii, which is in the Honolulu DMA, as are the communities served by Oceanic. KALO states that, by letter dated October 13, 2000, Oceanic refused to carry KALO because it did not provide a good quality signal to the system's principal headend.<sup>3</sup> KALO indicates, however, that Oceanic provided no technical data to support this allegation. KALO argues that when a cable operator refuses a station carriage on the basis of poor signal quality, Section 76.61(a)(2) of the Commission's rules requires the cable operator to provide a list of the equipment used to make the measurements, the point of measurement, a list and detailed description of the reception and over-the-air signal processing equipment used, and the methodology used for processing the signal at issue.<sup>4</sup> In this case, KALO states, Oceanic not only did not provide any of the above information, but it even failed to provide the signal strength measurement results, the location of the cable system's principal headend, or a statement as to whether the receiving antenna was panned for maximum signal strength.<sup>5</sup> KALO points out that the Commission encourages broadcasters and cable operators to work together and KALO states that it is willing to cooperate with Oceanic. Indeed, KALO states that it will provide, at its own expense, the equipment necessary to deliver a good quality signal to Oceanic's principal headend.<sup>6</sup> KALO therefore requests that the Commission order Oceanic to commence carriage of its signal.

4. In opposition, Oceanic argues that the Commission's must carry rules allow a cable operator to establish that a commercial television station located within its market is not entitled to carriage.<sup>7</sup> Oceanic states that the Commission requires that a UHF television station must deliver a signal level of -45 dBm or higher to a cable system's principal headend in order to qualify as a must carry station.<sup>8</sup> Oceanic states that it tested KALO's signal strength at its principal headend using good engineering practices in accordance with the Commission's test criteria.<sup>9</sup> Oceanic states that it measured KALO's signal on five separate occasions on January 15, 2001 and that none of the readings produced a signal level greater than -61.55 dBm.<sup>10</sup> Oceanic concludes that because it has established with probative engineering documentation that KALO fails to deliver a good quality signal, Oceanic should not be required to carry the station until or unless KALO provides a good quality signal to its principal headend.

5. In reply, KALO argues that Oceanic does not deny its failure to satisfy the requirements of Section 76.61(a)(2) of the Commission's rules when it refused carriage.<sup>11</sup> Instead, KALO states that Oceanic attempts to patch it over with the provision of its signal measurement data in this proceeding,

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<sup>3</sup>Petition at Exhibit 1.

<sup>4</sup>*Id.* at 3. *See also* 47 C.F.R. §76.61(a)(2).

<sup>5</sup>Petition at 3.

<sup>6</sup>*Id.*

<sup>7</sup>*Must Carry Order* at 2989-2991.

<sup>8</sup>47 C.F.R. §76.55(c)(3).

<sup>9</sup>Opposition, Declaration of Michael J. Goodish, Vice President of Networking and Technology for Oceanic Cable.

<sup>10</sup>*Id.*

<sup>11</sup>47 C.F.R. 76.61(a)(2).

months after it was first required. KALO contends that substantial questions exist as to the adequacy of the measurement process described by Oceanic.<sup>12</sup> As a result, KALO maintains that the validity of Oceanic's measurement data must be discounted. Even if that data should be accepted, however, KALO states that it is irrelevant because KALO has committed to provide, at its own expense, the equipment necessary to ensure delivery of a good quality signal.<sup>13</sup> KALO asserts that with such equipment it can easily exceed the technical criteria for must carry status.<sup>14</sup> KALO points out that Section 76.55(c)(3) of the Commission's rules only excludes those stations which do not deliver an adequate signal to the cable system's principal headend from the definition of "local commercial television stations" and which do not agree to be responsible for the cost of delivering such a signal.<sup>15</sup> In this instance, KALO states that Oceanic fails to acknowledge that KALO's poor signal quality is a non-issue in light of the stated commitment to bear responsibility for the costs of delivering an adequate signal.

6. We grant KALO's complaint. A review of the signal strength test Oceanic conducted of KALO's signal indicates that it was conducted pursuant to the Commission's engineering criteria and it does show that KALO fails to achieve a signal strength above the minimum signal strength criteria established by the Commission.<sup>16</sup> However, KALO has claimed that it can provide a good quality signal with the provision of additional equipment, at its own expense. Section 76.55(c)(3) of our rules allows local commercial television stations which fail to meet the signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.<sup>17</sup> KALO has made this commitment and by doing so will be eligible to be carried by Oceanic when it provides a signal which meets the Commission's signal strength criteria. In view of the foregoing, we find granting KALO's complaint to be in the public interest.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition filed by Pacifica Broadcasting Company **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534). Time Warner Entertainment Company, L.P. d/b/a Oceanic Cable **IS ORDERED** to commence carriage of KALO on its cable system serving Honolulu, Hawaii and surrounding areas sixty (60) days from the date on which KALO provides a good quality signal to Oceanic's principal headend.

8. **IT IS FURTHER ORDERED** that KALO shall notify Oceanic 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 the date it provides a good quality signal.

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<sup>12</sup>Reply, Declaration of John A. Fergie.

<sup>13</sup>See Petition, Declaration of Christopher J. Racine.

<sup>14</sup>Reply at 2.

<sup>15</sup>*Id.*; 47 C.F.R. §76.55(c)(3).

<sup>16</sup>For UHF stations, such as KRPV, the minimum signal strength criteria is -45 dBm at the input terminals of the signal processing equipment, or a baseband video signal.

<sup>17</sup>47 C.F.R. §76.55(c)(3).

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

FEDERAL COMMUNICATIONS COMMISSION

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