

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

In the Matter of:
Corridor Television, L.L.P.
v.
Pine Forest Cablevision
Request for Mandatory Carriage of
Television Station KBEJ(TV),
Fredericksburg, Texas
CSR-5666-M

MEMORANDUM OPINION AND ORDER

Adopted: June 15, 2001

Released: June 20, 2001

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

I. INTRODUCTION

1. Corridor Television, L.L.P. ("Corridor"), licensee of television broadcast station KBEJ(TV), Fredericksburg, Texas ("KBEJ" or the "Station") filed the above-captioned must carry complaint against Pine Forest Cablevision ("Pine Forest"), for failing to carry KBEJ on its cable system serving Alum Creek, Texas and the surrounding areas (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. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

1 8 FCC Rcd 2965, 2976-2977 (1993).

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. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by (continued...)

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.³ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁴ Should a station fail to provide the required 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 television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁵

III. DISCUSSION

4. In support of its complaint, KBEJ states that it is licensed to Fredericksburg, Texas, which is in the Austin, Texas DMA. It states further that Pine Forest operates a cable television system, which is also in the Austin DMA. KBEJ contends that because it is located within the same DMA as the Pine Forest Alum Creek cable system, it is entitled to mandatory carriage on that system. KBEJ asserts that it formally requested Pine Forest to commence carriage of its signal on channel 2 of the cable system at issue.⁶ KBEJ claims that Pine Forest did not respond to its request for mandatory carriage in violation of Section 76.61(a)(2) of the Commission's rules, which requires cable operators to respond in writing to requests for carriage within 30 days of receipt of such requests.⁷ According to KBEJ, it is committed to acquire and install any improvements and equipment needed to provide Pine Forest with a good quality signal.⁸ KBEJ requests that we order Pine Forest to commence carriage of its signal on channel 2 of the cable system serving the cable communities.

5. Section 76.55(e) of the Commission's rules provides that commercial television broadcast stations, such as KBEJ, are entitled to carriage on cable systems located in the same DMA.⁹ Cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.¹⁰ We find that Pine Forest has failed to meet its burden. Pine Forest did not respond within 30 days to KBEJ's letter requesting carriage as required by the Commission's rules nor did it file an opposition to KBEJ's must carry complaint.¹¹ KBEJ has committed to acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide Pine Forest with a good quality signal. KBEJ, by committing to provide any necessary

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Nielsen Media Research's DMAs.

³ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁴ 47 C.F.R. § 76.55(c)(3).

⁵ *Must Carry Order*, 8 FCC Rcd at 2991.

⁶ Complaint at 1 and Exhibit A.

⁷ Complaint at 1. See 47 C.F.R. § 76.61(a)(2).

⁸ Complaint at Exhibit A.

⁹ 47 C.F.R. § 76.55(e).

¹⁰ See *Must Carry Order*, 8 FCC Rcd at 2990.

¹¹ 47 C.F.R. § 76.55(c)(3).

equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.¹² Thus, we find that KBEJ is entitled to mandatory carriage on Pine Forest's Alum Creek cable system.

6. With respect to KBEJ's channel positioning request, we find that it has properly requested carriage on channel 2 of Pine Forest's system, the same channel number on which it 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.¹³ Based on the foregoing, we grant KBEJ's complaint.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the must carry complaint filed by Corridor Television, L.L.P., licensee of television broadcast station KBEJ, Fredericksburg, Texas against Pine Forest Cablevision **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that Pine Forest **SHALL COMMENCE CARRIAGE** of the KBEJ signal on Channel 2 of its cable system serving Alum Creek, Texas and surrounding areas, within sixty (60) days from the date of the release of this *Order*.

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

¹² See *Must Carry Order*, 8 FCC Rcd at 2991. See, e.g. *WMPF, Inc.* 11 FCC Rcd 17264 (CSB 1996); *KSLs, Inc.*, 11 FCC Rcd 12718 (CSB 1996). See also 47 U.S.C. § 534(h)(1)(B)(iii).

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

¹⁴ 47 C.F. R. § 0.321.