

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

In the Matter of:)	
)	
Minority Television Project, Inc. v.)	
Falcon Cable Systems Company II, L.P.,)	CSR-5665-M
d/b/a Charter Communications, Inc.)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: July 5, 2001

Released: July 9, 2001

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

I. INTRODUCTION

1. Minority Television Project, Inc., licensee of Television Broadcast Station KMTP (Educ., Ch. 32), San Francisco, California (“KMTP”) filed the above-captioned must carry complaint against Falcon Cable Systems Company II, L.P., d/b/a Charter Communications, Inc. (“Charter”), for Charter’s failure to carry KMTP on its cable system serving Gilroy, Morgan Hill, and surrounding California communities. An opposition to this complaint was filed on behalf of Charter. No reply from KMTP was received.

II. BACKGROUND

2. Pursuant to Section 615 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*”), noncommercial television broadcast stations (“NCE”) are entitled to assert mandatory carriage rights on cable systems when either the predicted Grade B contour of the NCE station encompasses the principal headend of the cable system or when the city of license of the NCE station is located within 50 miles of said principal headend.¹

III. DISCUSSION

3. In support of its request, KMTP states that it is a fully-qualified NCE station and it alleges that Charter has violated Section 76.56 of the Commission’s rules in denying carriage of its signal on the subject cable system.² KMTP points out that it is the only African American “community controlled” public television station in the country and its mission is to provide multicultural programming in the San Francisco market by and about African Americans, Asian Americans, Native Americans and Hispanic

¹8 FCC Rcd 2965, 2966-2971 (1993). *See also* 47 C.F.R. §87.56.

²47 C.F.R. §76.56.

Americans.³ KMTP states that in 1996, prior to Charter's acquisition of the subject cable system, the Commission found that the Gilroy-Morgan Hill system was carrying the maximum complement of mandatory broadcast stations because the system was technically integrated with neighboring systems serving an adjacent market from which it was infeasible to separate and therefore no further San Francisco market stations could be carried.⁴ Subsequently, in December 2000, KMTP states that the Commission found that the Gilroy-Morgan Hill cable system had been upgraded and the cable operator could no longer deny carriage to eligible San Francisco stations.⁵

4. KMTP states that by letter dated January 3, 2001, it formally requested carriage on Charter's Gilroy-Morgan Hill cable system.⁶ To date, KMTP states that it has received no response from Charter. KMTP maintains that Charter has knowingly failed to fulfil its signal carriage obligations with regard to KMTP. KMTP therefore requests that the Commission direct Charter to commence on-channel carriage of its signal.

5. In opposition, Charter argues that KMTP's complaint should be denied because KMTP fails to meet the fundamental eligibility requirements for NCE must carry status. Charter states that while KMTP emphasizes that its must carry rights are premised on its status as a qualified NCE station, the station fails to demonstrate that it is a local NCE television station. Charter points out that under the Commission's must carry rules, a cable operator is only required to carry local NCE stations requesting carriage which meet the requirements set forth in Section 76.55(b)(1) and (2) of the Commission's rules.⁷ Specifically, KMTP states that to be considered "local," an NCE station must either be licensed to a community located within 50 miles of the principal headend of the cable system or the principal headend of the system must be encompassed by the predicted Grade B contour of the NCE station.⁸ Charter asserts that KMTP does not meet either of these requirements. First, Charter states that the 70-mile distance between KMTP and the cable system's principal headend exceeds the statutorily-mandated limit of 50 miles.⁹ Second, Charter indicates that KMTP's Grade B contour does not encompass its principal headend located in Gilroy, California.¹⁰ As a result, Charter states that the Commission should conclude that KMTP is not a qualified local NCE station for must carry purposes.

6. Charter has submitted evidence that KMTP is not entitled to carriage as an NCE broadcast station that KMTP has failed to refute. Without more, we are compelled to conclude from the evidence presented that KMTP does not meet the qualifications necessary to be considered a local NCE station entitled to be carried on Charter's Gilroy-Morgan Hill cable system. As a result, KMTP's complaint will be denied.

³Petition at 2.

⁴*Paxson San Jose License, Inc. v. Falcon Cable*, 11 FCC Rcd 6915 (1996).

⁵*SAH Acquisition Corporation II*, DA 00-2846 (released December 19, 2000).

⁶Petition at Attachment A.

⁷47 C.F.R. §76.55(b)(1) and (2).

⁸*Id.*

⁹Opposition at Exhibit 1.

¹⁰*Id.* at Exhibit 2.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, that the complaint filed by Minority Television Project, Inc. **IS DENIED** pursuant to Section 615 of the Communications Act of 1934, as amended (47 U.S.C. §535).

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

FEDERAL COMMUNICATIONS COMMISSION

Steven Broecker, Acting Chief
Consumer Protection and Competition Division
Cable Services Bureau

¹¹47 C.F.R. §0.321.