

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

In the Matter of: )
Corridor Television, L.L.P. )
v. ) CSR-5657-M
Bluebonnet Electric Coop., Inc. )
d/b/a BRDC Cablevision )
Request for Mandatory Carriage of )
Television Station KBEJ(TV), )
Fredericksburg, Texas )

MEMORANDUM OPINION AND ORDER

Adopted: July 10, 2001

Released: July 12, 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 Bluebonnet Electric Coop., Inc. d/b/a BDRDC Cablevision ("BRDC"), for failing to carry KBEJ on its cable systems serving Smithville, Carmine, Dime Box and Lexington, Texas and the surrounding areas (the "cable communities"). BRDC filed an opposition to which Corridor 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. 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) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial (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.<sup>3</sup> 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.<sup>4</sup> 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 pursuant to 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.<sup>5</sup>

### 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 BRDC operates four cable television systems, which are also in the Austin DMA. KBEJ contends that because it is located within the same DMA as the BRDC cable systems serving the cable communities, it is entitled to mandatory carriage on those systems. KBEJ asserts that it formally requested BRDC to commence carriage of its signal on channel 2 of the cable systems at issue.<sup>6</sup> KBEJ notes that BRDC denied its must carry request because signal strength testing BRDC conducted at each of the headends in question did not receive a signal.<sup>7</sup> KBEJ argues that BRDC did not comply with Section 76.61(a)(2) of the Commission's rules because it did not provide the information the cable operator is required to provide the station when it denies carriage.<sup>8</sup> According to KBEJ, it is committed to do whatever is needed to provide BRDC with a good quality signal.<sup>9</sup> KBEJ requests that the Commission order BRDC to commence carriage of its signal on channel 2 of the cable systems serving the cable communities.

5. In opposition, BRDC states that it measured KBJ's signal strength at the Smithville, Carmine, Dime Box and Lexington cable systems and asserts that the tests it conducted at the four systems did not record any video or audio readings at each system's principal headend.<sup>10</sup> BRDC contends that as a result of its findings, it informed KBEJ that it would deny its must carry request for failure to deliver "not only a good quality signal, but also any signal" to each of the systems at issue.<sup>11</sup>

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broadcast television station's market be defined by Nielsen Media Research's DMAs.

<sup>3</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>4</sup> 47 C.F.R. § 76.55(c)(3).

<sup>5</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>6</sup> Complaint at 1 and Exhibit A.

<sup>7</sup> Complaint at Exhibit B. In its letter denying carriage, BRDC pointed out that Fredericksburg was located 115 miles from Smithville, 121 miles from Lexington, 127 miles from Box Dime and 133 miles from Carmine. *Id.*

<sup>8</sup> Complaint at 1. See 47 C.F.R. § 76-61(a)(2).

<sup>9</sup> Complaint at Exhibit A.

<sup>10</sup> Opposition at 1 and Exhibit A. We note that BRDC did not submit any signal strength surveys in support of allegations in its Opposition or its conclusions in Exhibit A.

<sup>11</sup> Opposition at 1.

6. In reply, KBEJ points out that although BRDC maintains that the Station does not provide a good quality signal at the Smithville, Carmine, Dime Box and Lexington headends, BRDC does not provide any evidence in support its allegations.<sup>12</sup> KBEJ states that it will conduct its own independent signal measurements at the four headends at issue.<sup>13</sup> KBEJ reiterates its commitment to provide BRDC with the necessary equipment to deliver a good quality signal to each of the systems. It also requests that the Commission order BRDC to commence carriage of the KBEJ signal once the Station delivers a good quality signal to the Smithville, Carmine, Dime Box and Lexington cable systems.<sup>14</sup>

7. The Cable Television Consumer Protection and Competition Act of 1992 (“1992 Cable Act”) provides that a cable operator is not required to carry a local commercial broadcast station that does not deliver a good quality signal to the principal headend of a cable system.<sup>15</sup> Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system’s principal headend, we believe that the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. In meeting this burden, the cable operator must show that it used good engineering practices, as defined below, to measure the signal delivered to the headend.

8. With respect to the standard to be used to determine what constitutes a good quality signal at a cable system’s headend, the 1992 Cable Act adopted a standard for VHF and UHF commercial stations.<sup>16</sup> For VHF commercial television station signals, the standard is –45 dBm; for UHF commercial television station signals, the standard is –45 dBm.<sup>17</sup>

9. In this instance, we are not persuaded by BRDC’s assertions, without any evidence to the contrary, that KBEJ does not deliver a good quality signal to the four cable systems at issue. We find that BRDC failed to follow generally accepted engineering practices in making such determination. To determine whether a certain level of signal is present, it is necessary to submit a series of measurements. Generally, if those measurements result in readings that are less than –55 dBm for a VHF station, we have said that at least four readings must be taken over a two-hour period.<sup>18</sup> When the initial readings, however, are between –55 dBm and –49 dBm, inclusive, we believe that the readings should be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results. Multiple signal quality tests are required to ensure accurate results, and cable operators are expected to employ sound engineering measurement practices when conducting such tests. Therefore, signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were done.<sup>19</sup> When measured against these criteria, we conclude that the

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<sup>12</sup> Reply at 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> 47 U.S.C. § 534(h)(1)(B)(iii).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* See 47 C.F.R. § 76.55(e)(3).

<sup>18</sup> See *Channel 5 Public Broadcasting, Inc. v. WestStar Cable* (“Channel 5”), 8 FCC Rcd 4953 (1993).

<sup>19</sup> See *Mountain Broadcasting Corporation v. Suburban Cablevision*, 10 FCC Rcd 7132, 7133 (1995). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Carriage Issues* (“Clarification Order”), 8 FCC Rcd 4142, 4143 (1993) and *Channel 5*, 8 FCC Rcd 4953.

information BRDC submitted is insufficient to demonstrate that KBEJ's signal is not of good quality at the Smithville, Carmine, Dime Box and Lexington headends. Thus, we grant KBEJ mandatory carriage request on these systems.

10. With respect to KBEJ's channel positioning request, we find that it has properly requested carriage on channel 2 of BRDC's Smithville, Carmine, Dime Box and Lexington cable systems, 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.<sup>20</sup> Based on the foregoing, we grant KBEJ's complaint.

#### IV. ORDERING CLAUSES

11. 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 Bluebonnet Electric Coop., Inc. d/b/a BRDC Cablevision **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that Classic **SHALL COMMENCE CARRIAGE** of the KBEJ signal on Channel 2 of its Smithville, Carmine, Dime Box and Lexington, Texas cable systems and surrounding areas, within sixty (60) days from the date of the release of this *Order*.

13. This action is taken pursuant to authority delegated by Section 0.321 if the Commission's rules.<sup>21</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>20</sup> 47 C.F.R. § 76.57. See *Must Carry Order* at 2988.

<sup>21</sup> 47 C.F. R. § 0.321.