

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

In the Matter of:	)	
	)	
Corridor Television, L.L.P.	)	
	)	CSR-5661-M
v.	)	
	)	
Ponca Universal/Classic Cable	)	
d/b/a Classic Cable	)	
	)	
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 Ponca Universal/Classic Cable d/b/a Classic cable (“Classic”), for failing to carry KBEJ on its cable system serving Bastrop County and the communities of Flatonia and Mason, Texas and the surrounding areas (the “cable communities”).<sup>1</sup> Classic filed an opposition to which Corridor replied.<sup>2</sup>

**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>3</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media

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<sup>1</sup> It appears that Bastrop County is served by Classic’s Lost Pine system. Opposition at 1. For clarity sake, we will refer to the Lost Pines system when discussing KBEJ’s complaint for carriage in Bastrop County.

<sup>2</sup> In its opposition, Classic states that it will begin carrying KBEJ on its Mason system when it reaches a mutual agreement for channel positioning and launch date with the Station. Opposition at 1. Therefore, this *Order* will consider only KBEJ’s complaint for carriage in the Lost Pines and Flatonia cable systems.

<sup>3</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

Research.<sup>4</sup> 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 complaint, KBEJ states that it is licensed to Fredericksburg, Texas, which is in the Austin, Texas DMA. It states further that Classic operates two cable television systems, which are also in the Austin DMA. KBEJ contends that because it is located within the same DMA as the Classic cable systems serving the cable communities, it is entitled to mandatory carriage on those systems. KBEJ asserts that it formally requested Classic to commence carriage of its signal on channel 2 of the cable systems at issue.<sup>5</sup> KBEJ claims that Classic 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.<sup>6</sup> According to KBEJ, it is committed to do whatever is needed to provide Classic with a good quality signal.<sup>7</sup> KBEJ requests that the Commission order Classic to commence carriage of its signal on channel 2 of the cable systems serving the cable communities.

4. In opposition, Classic states that it measured KBJ's signal strength at three of its systems: Lost Pines, Mason and Flatonia, Texas.<sup>8</sup> It states further that the Station's signal strength measurement is inadequate at the Flatonia and Lost Pines systems.<sup>9</sup> Classic concedes that KBEJ delivers a good quality signal to its Mason headend, and asserts that it will work with the Station to reach a mutually agreeable channel position and launch date.<sup>10</sup>

5. In reply, KBEJ contends that Classic maintains that the Station did not provide a good quality signal at the Flatonia and Lost Pines headends but did not provide the measurements on which it based its determination.<sup>11</sup> KBEJ states that it will conduct its own independent signal measurements at the two systems at issue.<sup>12</sup> KBEJ reiterates its request that the Commission order Classic to commence carriage of the KBEJ signal once the Station delivers a good quality signal to the Flatonia and Lost Pines cable systems.<sup>13</sup>

6. Subsequently, KBEJ supplemented its reply and submitted the results of signal strength

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<sup>4</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). Section 76.55(e) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

<sup>5</sup> Complaint at 1 and Exhibit A.

<sup>6</sup> Complaint at 1. *See* 47 C.F.R. § 76.61(a)(2).

<sup>7</sup> Complaint at Exhibit A.

<sup>8</sup> Opposition at 1.

<sup>9</sup> *Id.*

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

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

<sup>12</sup> *Id.*

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

testing Classic conducted on channel 2 at its Mason, Flatonia and Lost Pines systems on March 23, 2001. The signal strength testing at Lost Pine revealed a reading of +4 dBmV (-52.75 dBm); at Mason +4 dBmV (-44.75 dBm); and at Flatonia +2 dBmV (-46.75 dBm).<sup>14</sup> In its survey, Classic indicated that there was co-channel interference at each site.<sup>15</sup> KBEJ is committed to providing each Classic headend a Channel 2 cut antenna that will provide a 9.2dB gain for channel 2 and a 17 dB front-to-back ratio to help eliminate co-channel interference.<sup>16</sup> KBEJ also indicated that it would provide the Channel 2 cut antennas to significantly increase the signal level in all three locations with the result that the signal received in Lost Pine will satisfy the FCC's requirements.<sup>17</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>18</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>19</sup> For VHF commercial television station signals, the standard is -49 dBm; for UHF commercial television station signals, the standard is -45 dBm.<sup>20</sup>

9. In this instance, Classic, using a Broadband Archer antenna, and after a single measurement, determined that KBEJ's signal strength at the Lost Pine headend measured -52.75 dBm, which is below the -49 dBm standard level for a VHF commercial station's signal.<sup>21</sup> We find, however, that the cable system failed to follow generally accepted engineering practices in making its determination. To determine whether a certain level of signal is present, it is necessary to submit a series of measurements, not just one, as Classic did. 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>22</sup> When the initial readings, however, are between -55 dBm and -49 dBm, inclusive, as in this case, 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

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<sup>14</sup> Supplement at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.*

<sup>18</sup> 47 U.S.C. § 534(h)(1)(B)(iii).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* See 47 C.F.R. § 76.55(e)(3).

<sup>21</sup> Supplement at 2.

<sup>22</sup> See *Channel 5 Public Broadcasting, Inc. v. WestStar Cable* ("Channel 5"), 8 FCC Rcd 4953 (1993).

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>23</sup> When measured against these criteria, we conclude that the test Classic submitted is insufficient to demonstrate that KBEJ's signal is not of good quality at the Lost Pine headend. Thus, we grant KBEJ's mandatory carriage request on this system.

10. In addition, Classic's signal strength survey revealed a reading of -46.75 dBm for the Flatonia headend. That reading is well within the -49 dBm standard discussed above, and shows that KBEJ delivers a good quality signal to the Flatonia headend. Thus, we find that KBEJ delivers a good quality signal to the Flatonia cable system and is entitled to the mandatory carriage it has requested from Classic. Finally, as noted above, Classic has agreed to begin carriage of KBEJ on the Mason cable system as soon as an agreement for channel positioning and a launch date can be worked out with the Station.

11. With respect to KBEJ's channel positioning request, we find that it has properly requested carriage on channel 2 of Classic's Lost Pine, Mason and Flatonia 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>24</sup> Based on the foregoing, we grant KBEJ's complaint.

#### IV. ORDERING CLAUSES

12. 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 Ponca Universal/Classic Cable d/b/a Classic Cable **IS GRANTED**.

13. **IT IS FURTHER ORDERED** that Classic **SHALL COMMENCE CARRIAGE** of the KBEJ signal on Channel 2 of its Lost Pine and Flatonia, Texas cable systems and surrounding areas, within sixty (60) days from the date of the release of this *Order*.

14. This action is taken pursuant to authority delegated by Section 0.321 if the Commission's rules.<sup>25</sup>

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>23</sup> See *Mountain Broadcasting Corporation v. Suburban Cablevision*, 10 FCC Rcd 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.

<sup>24</sup> 47 C.F.R. § 76.57. See *Must Carry Order* at 2988.

<sup>25</sup> 47 C.F. R. § 0.321.