

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

In the Matter of:)	
)	
Channel 64 of Scranton, Inc.)	
v.)	CSR-5664-M
Blue Ridge Communications)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 2001

Released: July 17, 2001

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

I. INTRODUCTION

1. Channel 64 of Scranton, Inc., licensee of television broadcast station WQPX (Ch. 64), Scranton, Pennsylvania (“WQPX”), filed the above-captioned complaint against Blue Ridge Communications (“Blue Ridge”), for its failure to carry WQPX on its cable system serving Stroudsburg, Pennsylvania and surrounding environs.¹ An opposition to this petition was filed on behalf of Blue Ridge to which WQPX 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.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

¹Petition at Exhibit 1.

²8 FCC Rcd 2965, 1976-2977 (1993).

³Section 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 Nielsen Media Research’s 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*”).

III. DISCUSSION

3. In support of its complaint, WQPX states that it requested carriage on Blue Ridge's system by letter dated December 21, 2000.⁴ WQPX states that although Blue Ridge was obligated, pursuant to Section 76.61(a)(2) of the Commission's rules, to respond to this request within thirty days, stating its reasons if it failed to carry the station, its first response did not include the test results of WQPX's signal the system had indicated in an earlier phone call that it would perform.⁵ WQPX states that only after a second letter to Blue Ridge did the system provide the results of the signal tests it conducted which appear to indicate that WQPX did not provide a good quality signal to the Stroudsburg headend.⁶ WQPX states that it is filing its complaint within 60 days of Blue Ridge's failure to properly respond to the initial request for carriage.

4. WQPX argues that it is a qualified local commercial television station located in the Wilkes Barre-Scranton, Pennsylvania DMA as are the communities served by Blue Ridge. WQPX states that it is therefore entitled to carriage on Blue Ridge's system if its carriage does not increase the cable operator's copyright liability and it either delivers a good quality signal to the system's principal headend or agrees to be responsible for the costs of any equipment necessary to ensure the delivery of a signal of sufficient strength.⁷ WQPX asserts that it meets both of these qualifications – its carriage will not increase Blue Ridge's copyright liability and, in light of the signal strength tests which appear to indicate that WQPX does not currently deliver an adequate signal, WQPX states that it agrees to assume the costs of delivering a good quality signal to Blue Ridge's principal headend. WQPX therefore requests that the Commission order Blue Ridge to cooperate with WQPX in its efforts to deliver a good quality signal and to commence carriage of its station.

5. In opposition, Blue Ridge argues that the signal strength tests it conducted on four separate occasions on March 29, 2001 indicate that WPXB failed to provide any detectable visual or audio signal at the Stroudsburg headend.⁸ Indeed, Blue Ridge indicates that it was only able to pick up WQPX's signal broadcast through a nearby translator station, W64AI, which rebroadcasts the signal of in-market station WBRE-TV, Channel 28.⁹ Blue Ridge maintains that it followed good engineering practices in testing WQPX's signal strength and that the tests comply with the Commission's timing requirements. In light of its probative engineering documentation that WQPX fails to provide a good quality signal, Blue Ridge argues that it should not be required to carry WQPX unless and until WQPX provides a good quality signal to the system's principal headend.

6. In reply, WQPX states that Blue Ridge's sole basis for opposition is that the complaint should be dismissed because WQPX does not provide a good quality signal. However, WQPX points out that it made the commitment in its complaint to provide, at its own cost, whatever equipment would be necessary to ensure the delivery of a good quality signal and the Commission has held that a station's

⁴Petition at Exhibit 2.

⁵47 C.F.R. §76.61(a)(2). *See also* Petition at Exhibit 3.

⁶Petition at Exhibits 4 and 5.

⁷47 U.S.C. §534(h)(1)(B)(ii)-(iii); 47 C.F.R. §76.55(c)(2)-(3).

⁸Opposition, Declaration of Richard A. Semmel, General Manager of Blue Ridge.

⁹*Id.*

commitment to provide a good quality signal as part of its must carry complaint is sufficient.¹⁰ WQPX contends that it filed its carriage complaint simply to protect its right to carriage.

7. We grant WQPX's complaint. A review of the signal strength tests of WQPX's signal provided by Blue Ridge indicates that the tests were conducted employing good engineering practices and demonstrate that WQPX does not presently provide a good quality signal at Blue Ridge's principal headend. We note, however, that WQPX has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's 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.¹¹ WQPX has made this commitment and by doing so will be eligible to be carried by Blue Ridge when it provides a signal which meets the Commission's signal strength criteria. In view of the foregoing, we find the grant of WQPX's complaint to be in the public interest.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Channel 64 of Scranton, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534). Blue Ridge Communications, **IS ORDERED** to commence carriage of WQPX on its cable system serving Stroudsburg, Pennsylvania and surrounding environs sixty (60) days from the date on which WQPX provides a good quality signal to Blue Ridge's principal headend.

9. **IT IS FURTHER ORDERED** that WQPX shall notify Blue Ridge 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.

10. 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

¹⁰See e.g., *Hispanic Keys Broadcasting Corp. v. Adelpia Cable Partners, L.P. d/b/a Adelpia Communications*, 13 FCC Rcd 15061 (2000); and *Jasas Corporation v. Tele-Media Company*, 14 FCC Rcd 7059 (1999).

¹¹47 C.F.R. §76.55(c)(3).