

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

In the Matter of:)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	
v.)	CSR-5677-M
Time Warner Cable and Time Warner Communications)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: August 23, 2001

Released: August 27, 2001

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

I. INTRODUCTION

1. Rancho Palos Verdes Broadcasters, Inc., permittee of television broadcast station KRPA, (Ch. 44), Rancho Palos Verdes, California (“KRPA”) filed the above-captioned complaint against Time Warner Cable and Time Warner Communications (collectively “Time Warner”), for their failure to carry KRPA on several cable systems located in the Los Angeles, California area.¹ An opposition to this petition was filed on behalf of Time Warner to which KRPA 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

¹Time Warner states that Time Warner Cable serves the community of Banning, California and surrounding communities (the “Banning System”). Time Warner Communications serves two separate systems: 1) one serving the San Fernando Valley area of the City of Los Angeles, the community of Santa Clarita and the unincorporated area formerly known as Canyon Country, all from a headend located in Chatsworth (the “Chatsworth System”); and 2) the other serving the City of South Pasadena, California (the “South Pasadena System”). See Opposition at 1-2. We note that KRPA’s complaint also references two other Time Warner cable systems: 1) Gardena, California (the “Gardena System”); and 2) Garden Grove, Huntington Beach, and Orange (the “Huntington Beach System”). Time Warner’s opposition neither addresses these systems nor argues that their inclusion in KRPA’s complaint was in error. We will assume, therefore, that KRPA’s complaint with regard to these systems is unopposed.

²8 FCC Rcd 2965, 1976-2977 (1993).

Research.³ 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, KRPA states that it is an authorized full-power UHF television station licensed to a community located within the Los Angeles DMA as are the communities served by Time Warner. KRPA indicates that by letters dated January 17, 2001, shortly after commencing broadcasting under Program Test Authority, it requested carriage on Time Warner's systems.⁴ KRPA states that Time Warner subsequently denied carriage on the Banning System, the South Pasadena System, the Chatsworth System and the Gardena System for KRPA's alleged failure to provide a good quality signal pursuant to Section 76.55(c)(3) of the Commission's rules.⁵ KRPA states that Time Warner failed to respond to its request for carriage on the Huntington Beach System as required by Section 76.61(a)(2) of the Commission's rules.⁶ In its response to the denial letters, KRPA states that it advised Time Warner that it was only broadcasting between the hours of 6-8 p.m. daily and requested that Time Warner re-test its signal during those hours.⁷ At the same time, KRPA states that it offered to provide Time Warner with a good quality signal by alternative means, such as fiber optics or microwave.⁸ KRPA maintains that, except for one additional letter refusing carriage to the Huntington Beach System, Time Warner did not respond, commence carriage of its signal, nor cooperate in any way.⁹

4. KRPA argues that Time Warner's reason for denying carriage is without merit. It points out that Time Warner did not consistently comply with Section 76.61(a)(2) of the Commission's rules in responding to KRPA's election and demands for carriage because in only one denial letter did it properly describe the equipment used to test its signal or its testing procedures.¹⁰ KRPA states that despite the fact that it requested a re-test of its signal during its operating hours and offered to provide its signal by alternative means, Time Warner failed to respond. KRPA maintains that, contrary to its must carry obligations, Time Warner appears unwilling to carry KRPA in lieu of a non-broadcast service. KRPA argues that neither the 1992 Cable Act nor the Commission's rules afford Time Warner such discretion. KRPA requests that the Commission require Time Warner to commence carriage of its signal on the subject cable systems.

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) 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. *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").

⁴Petition at Exhibit A.

⁵*Id.* at Exhibit B. *See also* 47 C.F.R. §76.55(c)(3).

⁶47 C.F.R. §76.61(a)(2).

⁷Petition at Exhibit C.

⁸*Id.*

⁹*Id.* at Exhibit E.

¹⁰Petition at 4.

5. In opposition, Time Warner argues that KRPA is not a “qualified” commercial television station entitled to carriage on the subject cable systems. Time Warner states that KRPA began broadcasting on December 19, 2000 and, as is evident from the correspondence attached to the complaint, the station has only a limited broadcast day.¹¹ Time Warner maintains that this factor has restricted its ability to measure KRPA’s signal strength at its various headends. Moreover, Time Warner states that KRPA is not the only station occupying its assigned channel. Time Warner states that in its attempts to measure KRPA’s signal during certain hours it encountered co-channel interference from a translator station also operating on channel 44 which rebroadcasts the signal of Station KJLA (Ch. 57), Ventura, California.¹² Time Warner argues that the sharing of channel 44 by two stations in the Los Angeles market has complicated its efforts to test KRPA’s signal strength and reflects KRPA’s under-utilization of its assigned broadcast channel.

6. Time Warner states that it has tested KRPA’s signal at the headends serving the Banning System, the Chatsworth System, and the South Pasadena System. Time Warner maintains that it used good engineering practices to measure KRPA’s signal, in accordance with the Commission’s test criteria.¹³ Time Warner indicates that it tested KRPA signal strength at its Banning System on five occasions between 11 p.m. and 1 a.m. on May 3-4, 2001.¹⁴ Time Warner states that on each occasion KRPA’s signal failed to meet the Commission’s signal strength minimum.¹⁵ Signal strength tests for the Chatsworth and South Pasadena systems were conducted on March 21, 2001, and Time Warner indicates that for both systems KRPA’s signal strength fell well below the –45 dBm threshold set by the Commission.¹⁶ As a result of these tests, Time Warner asserts that it should not be required to carry KRPA on its systems.

7. In reply, KRPA argues that Time Warner’s claim that KRPA is not eligible for must carry status, specifically as to the Banning, Chatsworth and South Pasadena systems is misplaced. KRPA states that Section 76.55(c)(3) of the Commission’s rules defines a “local commercial television station” in terms of technical signal levels solely for the purposes of allocating responsibility for the provision of a good quality signal to a cable headend.¹⁷ KRPA points out that if a UHF television station does not deliver to the principal headend a signal level of –45 dBm, then the station must bear the costs of providing any equipment or alternate means of delivery necessary to ensure the delivery of a good quality signal.¹⁸ KRPA states that in the *Must Carry Order*, the Commission emphasized that a television station could deliver, at its own expense, a good quality signal by the use of “improved antennas, increased tower heights, microwave relay equipment. . .” and thereby qualify for must carry status.¹⁹ In such circumstances, KRPA states that the Commission has held that cable operators are required to carry the signal when a good

¹¹Opposition at 2, citing Exhibits A-E of Petition.

¹²*Id.* at 2. Time Warner states that this translator, whose call sign is KSMV-LP, is operated by Costa de Oro Television, Inc., the licensee of KJLA. *Id.* at 2.

¹³*Id.* at 3.

¹⁴*Id.* at Attachment 2.

¹⁵*Id.*

¹⁶*Id.* at Attachment 3.

¹⁷47 C.F.R. §76.55(c)(3).

¹⁸Reply at 2.

¹⁹8 FCC Rcd 2965, 2991 (1993).

quality signal has been provided.²⁰ KRPA argues that it notified Time Warner, by letter dated March 29, 2001, that it offered to ensure the delivery of a good quality signal by alternate means.²¹ KRPA asserts that, despite the fact that Time Warner's signal strength tests provide evidence of poor signal quality from KRPA on the Banning, Chatsworth and South Pasadena systems, they do not allow Time Warner to avoid its carriage responsibilities in light of KRPA's offer to ensure, at its own expense, the delivery of a good quality signal.

8. With regard to the rebroadcasting of Station KJLA via translator KSMV-LP on channel 44, KRPA states that Costa de Oro Television, the licensee of both KJLA and KSMV-LP has a pending application to relocate KSMV-LP to channel 33 as a result of the displacement caused by KRPA's commencement of operations.²² KRPA argues that once this relocation request is approved by the Commission, the interference issue raised by Time Warner will be moot. In any event, KRPA maintains that it is prepared to provide a good quality signal through alternative means which will make the interference argument irrelevant.²³ Finally, KRPA notes that although it has entered into negotiations with Time Warner for carriage of its signal on the Gardena and Huntington Beach systems, no agreement has been reached to date owing to Time Warner's offer to place KRPA on a channel other than its over-the-air channel.

9. We grant KRPA's complaint. A review of the signal strength tests of KRPA's signal provided by Time Warner indicates that the tests were conducted employing good engineering practices and demonstrate that KRPA does not presently provide a good quality signal at Time Warner's principal headends serving Banning, Chatsworth and South Pasadena. We note, however, that KRPA 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.²⁴ KRPA has made this commitment and by doing so will be eligible to be carried by Time Warner when it provides a signal which meets the Commission's signal strength criteria to the Banning, Chatsworth and South Pasadena cable systems. With regard to the Huntington Beach and Gardena systems, no signal strength tests were submitted by Time Warner alleging that KRPA did not provide a good quality signal to those system headends. KRPA indicated in its reply that it is in negotiations with Time Warner for carriage on these two systems, but that the negotiations have been stalled over channel positioning and, as a result, has requested that its complaint with respect to the Huntington Beach and Gardena systems be granted. We agree and will order Time Warner to commence carriage of KRPA on these systems on its requested over-the-air channel. In view of the foregoing, we find the grant of KRPA's complaint to be in the public interest.

²⁰See e.g., *Norwell Television LLC*, 16 FCC Rcd 4521 (2001); *WMFP, Inc.*, 11 FCC Rcd 17264 (1996); and *KSLs, Inc.*, 11 FCC Rcd 12718 (1996).

²¹Petition at Exhibit D.

²²See Public Notice, Report No. 24997 (released June 1, 2001), File No. BPTTL-20010529ABP.

²³Reply at 3.

²⁴47 C.F.R. §76.55(c)(3).

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petition filed by Rancho Palos Verdes Broadcasters, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534). Time Warner Cable and Time Warner Communications **ARE ORDERED** to commence carriage of KRPA on their cable systems serving Banning, Chatsworth and South Pasadena, California, sixty (60) days from the date on which KRPA provides a good quality signal to the system's principal headends.

11. **IT IS FURTHER ORDERED** that Time Warner shall commence carriage of KRPA on the cable systems serving Gardena and Huntington Beach, California, sixty (60) days from the release date of this Order and that it shall carry the station on its over-the-air channel.

12. **IT IS FURTHER ORDERED** that KRPA shall notify Time Warner in writing of its carriage and channel position elections (§§76.56, 76.57, and 76.64(f) of the Commission's rules) with regard to the Banning, Chatsworth and South Pasadena cable systems within thirty (30) days of the date it provides a good quality signal.

13. 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