

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

In the Matter of:)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	
v.)	CSR-5690-M
AT&T Broadband)	
)	
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 AT&T Broadband ("AT&T"), for its 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 AT&T 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 Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹AT&T states that it operates eight cable systems serving the following California communities: 1) Corona and Pomona; 2) Lake Elsinore; 3) Claremont; 4) Bell and Cudahy; 5) Artesia; 6) Costa Mesa and Tustin; 7) Los Angeles, Inglewood, Carson, Compton, Westchester, Cypress, Downey, Hawaiian Gardens, Lakewood and Wilmington; and 8) Newhall and Tujunga. See Opposition at Exhibit 1. AT&T notes that although KRPA listed the community of Camarillo/Moorpark as part of its complaint, that community is not served by AT&T. See Opposition at 2, n. 2.

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) 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*

(continued...)

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 AT&T. KRPA indicates that by letters dated January 17, 2001, shortly after commencing broadcasting under Program Test Authority, it requested carriage on AT&T's systems.⁴ KRPA states that AT&T failed to respond to its requests for carriage, as required by Section 76.61(a)(2) of the Commission's rules nor did it cooperate with KRPA or commence carriage of its signal.⁵ KRPA maintains that, contrary to its must carry obligations, AT&T 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 AT&T such discretion. KRPA requests that the Commission require AT&T to commence carriage of its signal on the subject cable systems.

4. In opposition, AT&T argues that KRPA's complaint should be denied because the station does not deliver a signal of sufficient strength to any of the principal headends that serve the subject cable communities.⁶ AT&T states that for several of the systems KRPA's signal strength did not approach the required levels and for other systems the signal measured was that of KJLA, which appears to broadcast on the same frequency as KRPA.⁷ AT&T asserts that the delivery of an adequate signal to cable systems' headends is a necessary pre-condition to invoking must carry rights.⁸ Further, AT&T maintains that KRPA incorrectly states that AT&T did not respond to or cooperate with KRPA in its efforts to gain carriage. AT&T points out that both its vice president of field operations and its director of engineering had several conversations with KRPA's general manager in which AT&T's personnel acknowledged receipt of KRPA's carriage requests and attempted to coordinate signal strength tests at the relevant headends.⁹ AT&T states that in the course of these discussions, KRPA indicated that it was operating at reduced power due to a problem with its transmitter.¹⁰ AT&T states that KRPA has yet to provide a formal notification that this problem has been resolved. AT&T concludes, therefore, that because KRPA has yet to deliver a good quality signal, it is under no legal obligation to carry KRPA.

5. In reply, KRPA argues that AT&T's claim that KRPA is not eligible for must carry status is misplaced. KRPA states that Section 76.55(c)(3) of the Commission's rules, on which AT&T relies, 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.¹¹ KRPA points out

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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.

⁵47 C.F.R. §76.61(a)(2).

⁶Opposition at Exhibit 2.

⁷*Id.*

⁸*See* 47 C.F.R. §76.55(c)(3).

⁹Opposition at 2.

¹⁰*Id.*

¹¹47 C.F.R. §76.55(c)(3).

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.¹² 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.¹³ In such circumstances, KRPA states that the Commission has held that cable operators are required to carry a station when a good quality signal has been provided.¹⁴ KRPA argues that it notified AT&T, by letter dated March 29, 2001, that it offered to ensure the delivery of a good quality signal by alternate means.¹⁵ KRPA asserts that, despite its claim, AT&T did not respond in writing to KRPA’s carriage requests within the required 30 days and the signal strength tests it submits with its opposition were performed at least 75 days after KRPA’s demand for carriage. In any event, KRPA states that the fact that AT&T’s signal strength tests provide evidence of KRPA’s poor signal quality do not allow AT&T to avoid its carriage responsibilities in light of KRPA’s offer to ensure, at its own expense, the delivery of a good quality signal.

6. We grant KRPA’s complaint. A review of the signal strength tests of KRPA’s signal provided by AT&T indicates that all the tests were conducted employing good engineering practices and, except for one, demonstrate that KRPA does not presently provide a good quality signal at 7 of the 8 AT&T principal headends. 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.¹⁶ KRPA has made this commitment and by doing so will be eligible to be carried by AT&T on its systems serving Corona, Lake Elsinore, Claremont, Bell, Artesia, Costa Mesa, and Los Angeles when it provides a signal which meets the Commission’s signal strength criteria. For the system serving the communities of Newhall and Tujunga, however, the results of the signal strength test provided by AT&T indicate that KRPA does provide a good quality signal to that system’s headend. As a result, KRPA’s carriage on that system will be granted without any preconditions. In view of the foregoing, we find the grant of KRPA’s complaint to be in the public interest.

IV. ORDERING CLAUSES

7. 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). AT&T Broadband **IS ORDERED** to commence carriage of KRPA on its cable systems serving Corona, Lake Elsinore, Claremont, Bell, Artesia, Costa Mesa and Los Angeles, California, sixty (60) days from the date on which KRPA provides a good quality signal to AT&T’s principal headends.

¹²Reply at 2.

¹³8 FCC Rcd 2965, 2991 (1993).

¹⁴See 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).

¹⁵Petition at Exhibit C.

¹⁶47 C.F.R. §76.55(c)(3).

8. **IT IS FURTHER ORDERED** that AT&T shall commence carriage of KRPA on its cable system serving the communities of Newhall and Tujunga, California, sixty (60) days from the release date of this Order and shall notify AT&T of its carriage and channel position elections (§§76.56, 76.57, and 76.64(f) of the Commission's rules) within thirty days of this Order.

9. **IT IS FURTHER ORDERED** that KRPA shall notify AT&T 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 its system serving Corona, Lake Elsinore, Claremont, Bell, Artesia, Costa Mesa and Los Angeles, California, 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