

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

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| In the Matter of: |) | |
| |) | |
| Rancho Palos Verdes Broadcasters, Inc. |) | |
| v. |) | CSR-5692-M |
| Mediacom Communications Corporation |) | |
| |) | |
| 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 Mediacom Communications Corporation ("Mediacom"), for its failure to carry KRPA on its cable systems serving Ridgecrest and Sun City, California. An opposition to this petition was filed on behalf of Mediacom to which KRPA replied. Mediacom subsequently filed a surreply and KRPA filed a motion to strike.

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.¹ A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.² A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

¹8 FCC Rcd 2965, 1976-2977 (1993).

²Section 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*").

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 Mediacom. KRPA indicates that by letters dated January 17, 2001, shortly after commencing broadcasting under Program Test Authority, it requested carriage on Mediacom's systems.³ KRPA states that Mediacom 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.⁴ KRPA states that it sent a second letter on March 29, 2001, informing Mediacom that it would seek to enforce its must carry rights.⁵ Mediacom's response to these letters was that it would not consider carriage until KRPA presented a copy of its license.⁶ KRPA argues that Mediacom mistakenly believes that it is not required to carry KRPA because the station's license is still pending. However, KRPA notes that in *Johnson Broadcasting, Inc.*, the Bureau held that "since operators of these broadcast stations hold a permit to construct a station, are authorized to operate under program authority in accordance with the Commission's rules, and are awaiting an application for license, we see no reason why they should be denied must carry rights."⁷ KRPA states that it is operating under a valid authorization and has been broadcasting under automatic program test authority since December 19, 2000.⁸ KRPA maintains that, contrary to its must carry obligations, Mediacom 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 Mediacom such discretion. KRPA requests that the Commission require Mediacom to commence carriage of its signal on the subject cable systems.

4. In opposition, Mediacom argues that KRPA is not eligible for carriage on its systems because the station does not provide an adequate quality signal to either headend. Mediacom states that Section 614(h)(1)(B)(iii) of the 1992 Cable Act specifically excludes from the definition of a "local commercial television station" eligible for must carry status any station "that does not deliver to the principal headend of a cable system . . . a signal level of -45 dBm for UHF signals . . . at the input terminals of the signal processing equipment. . . ."⁹ Mediacom asserts that its most recent tests results indicate that KRPA's signal does not meet the minimum required signal strength threshold for either of its systems.¹⁰ As a result, Mediacom requests that KRPA's complaint be denied.

5. In reply, KRPA argues that Mediacom'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 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 that if a UHF television station does not deliver to the principal headend a signal level of -45 dBm, then the station

³Petition at Exhibit A.

⁴47 C.F.R. §76.61(a)(2).

⁵Petition at Exhibit C.

⁶*Id.* at Exhibit D.

⁷75 RR 2d 1333 (1994).

⁸Petition at 3.

⁹47 U.S.C. §534(h)(1)(B)(iii). *See also* 47 C.F.R. §76.55(c)(3).

¹⁰Opposition at Exhibit A.

¹¹47 C.F.R. §76.55(c)(3).

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 the signal.¹⁴ 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.¹⁵ KRPA asserts that, despite the fact that Mediacom’s signal strength tests provide evidence of poor signal quality from KRPA at the cable system’s principal headends, they do not allow Mediacom 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. KRPA notes, as a procedural matter, that Mediacom’s opposition did not conform to the written verification requirements of Section 76.6(a)(4) of the Commission’s rules.¹⁶ KRPA states that, according to that section, all submissions “must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose.”¹⁷ KRPA asserts that Mediacom did not enclose such a verified statement and its opposition should be dismissed.

7. In its surreply, Mediacom argues that KRPA incorrectly claims that Mediacom’s opposition failed to meet the written verification requirements of Section 76.6(a)(4) of the Commission’s rules. Mediacom states that this statement was properly included in its opposition. Further, Mediacom maintains that KRPA wrongly asserts that Mediacom is unwilling to work with KRPA to resolve the signal strength issues. Mediacom points out that there is no dispute that KRPA currently cannot provide the systems with a signal which meets the required signal strength criteria.¹⁸ Mediacom states that it recently informed KRPA that if it delivered an adequate signal to its headends, it would qualify for carriage.¹⁹ However, Mediacom states that, rather than confront the challenge of meeting its must carry obligations through cooperation and better engineering, KRPA instead seeks administrative relief from the Commission.

8. KRPA states in a motion to strike Mediacom’s surreply that Section 76.7(c)(1) of the Commission’s rules entitled KRPA, in its reply, to aver additional facts or considerations in support of its arguments to answer Mediacom’s allegations.²⁰ KRPA maintains that its arguments did not extend beyond responses to Mediacom’s earlier claims. Therefore, because Section 76.7 of the Commission’s rules do not

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 D.

¹⁶47 C.F.R. §76.6(a)(4).

¹⁷*Id.*

¹⁸Surreply at 2.

¹⁹*Id.* at Exhibit.

²⁰47 C.F.R. 76.7(c)(1).

contemplate the filing of an additional reply in a must carry proceeding and because Mediacom did not provide the required justification for the acceptance of this additional pleading, KRPA asserts that Mediacom's surreply should be stricken.²¹

9. We grant KRPA's complaint. With regard to procedural matters, we concur with Mediacom that it met the written verification requirements of Section 76.6(a)(4) of the Commission's rules. In addition, we will accept the surreply submitted by Mediacom, particularly as it responds to allegations raised earlier by KRPA.

10. A review of the signal strength tests provided by Mediacom shows that they were not conducted employing good engineering practices. In this regard, Mediacom failed to provide a description of the characteristics of the equipment used and the orientation of the antennas used in the tests.²² Moreover, Mediacom conducted 4 readings over 1 hour at both headend sites. Generally, however, if the tests results are less than -51 dBm for a UHF station, as is the case here, we have said that at least four readings must be taken over a two-hour period. In this case, Mediacom did not conduct its four readings over the required two-hour period. Further, for the Ridgecrest system alone, Mediacom's test information appears to indicate that the most recent date of calibration for the equipment used is over two years old which is beyond the recommended annual calibration of equipment used in testing. In light of the above, we cannot conclude that Mediacom has shown that KRPA does not presently provide a good quality signal at its systems' principal headends.

IV. ORDERING CLAUSES

11. 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). Mediacom Communications Corporation **IS ORDERED** to commence carriage of KRPA on its cable systems serving Ridgecrest and Sun City, California, sixty (60) days from the release date of this Order.

12. **IT IS FURTHER ORDERED** that KRPA shall notify Mediacom 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 release date of this Order.

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

²¹47 C.F.R. §76.7.

²²See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Broadcast Signal Carriage Issues, 8 FCC Rcd 4142, 4144 (1993) ("Clarification Order").