

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

In the Matter of:	)	
	)	
Prime Time Christian Broadcasting, Inc. v.	)	
TCI Cablevision of New Mexico, Inc.	)	CSR-5636-M
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 9, 2001**

**Released: April 11, 2001**

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

**I. INTRODUCTION**

1. Prime Time Christian Broadcasting, Inc., licensee of television broadcast station KRPV (Ch. 27), Roswell, New Mexico ("KRPV"), filed the above-captioned complaint against TCI Cablevision of New Mexico, Inc. ("TCI"), for its failure to carry KRPV on its cable systems serving Farmington and Gallup, New Mexico.. An opposition to this petition was filed on behalf of TCI to which KRPV 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.<sup>1</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>2</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

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<sup>1</sup>8 FCC Rcd 2965, 1976-2977 (1993).

<sup>2</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). Until January 1, 2000, Section 76.55(e) of the Commission's rules provided that Arbitron's "Areas of Dominant Influence," or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) now requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must-carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on 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 request, KRPV states that it is located in the Albuquerque-Santa Fe, New Mexico DMA, as are TCI's cable systems. KRPV states that, by letter dated September 30, 1999, it informed TCI that it had elected mandatory carriage in lieu of retransmission consent.<sup>3</sup> At the same time, KRPV states that it indicated that it would supply its signal to TCI via its affiliated television translator station K47DR, Farmington, New Mexico.<sup>4</sup> KRPV states that TCI's November 12, 1999 response acknowledged that its systems were within KRPV's market, but maintained that, absent signal strength tests to the contrary, it believed KRPV's signal would be insufficient for carriage.<sup>5</sup> KRPV points out that signal testing and further correspondence followed, culminating in a September 11, 2000 letter to TCI informing the cable operator that KRPV was qualified for carriage on the Farmington and Gallup systems and that it was capable of providing a good quality signal via its translator.<sup>6</sup> KRPV states that TCI never responded to this letter and thus the instant complaint was filed. KRPV requests that the Commission compel TCI to commence carriage of KRPV's signal on the subject cable systems and to continue such carriage until such time as KRPV makes a contrary election or ceases to qualify for must carry status.

4. In opposition, TCI argues that KRPV's complaint is untimely and should be dismissed. TCI points out that Section 76.61(a)(5) of the Commission's rules states that no must carry complaint will be accepted by the Commission if filed more than 60 days after the denial of carriage by a cable operator.<sup>7</sup> In this instance, TCI states that KRPV apparently relies on TCI's failure to respond to its September 11, 2000 letter in order to calculate the time for filing its complaint. However, TCI asserts that in that same letter, KRPV concedes that TCI had previously denied KRPV's must carry request in a letter dated August 7, 2000.<sup>8</sup> TCI states in its August 7<sup>th</sup> letter specifically states that "we again respectfully decline to add KRPV based upon the distance and terrain between Farmington and Roswell."<sup>9</sup> TCI argues that pursuant to Section 76.61, KRPV's complaint should have been filed 60 days from the date of this denial, or no later than October 6, 2000. TCI points out, however, that the filing date of KRPV's complaint was 126 days after denial.

5. In any event, TCI states that KRPV is geographically remote, at approximately 282 miles from Gallup and 312 miles from Farmington, and its Grade B does not encompass the communities. TCI states that because of these and other factors it intends to file a petition for special relief with the Commission requesting a market modification to exclude KRPV from carriage on the subject cable systems.<sup>10</sup>

6. In reply, KRPV maintains that TCI's opposition does not attempt to rebut any aspect of KRPV's showing but instead merely asserts that the instant complaint is untimely and that KRPV intends

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<sup>3</sup>Petition at Exhibit A.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* at Exhibit B.

<sup>6</sup>*Id.* at Exhibit C.

<sup>7</sup>47 C.F.R. §76.61(a)(5).

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

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

<sup>10</sup>We note that TCI filed a modification petition to exclude KRPV from its Aztec, Bloomfield, Farmington, Gallup and Gamerco, New Mexico cable systems on February 27, 2001 (CSR-5654-A). However, due to statutory deadlines, the modification petition could not be included as part of our current action.

to file a market modification petition. With regard to timeliness, KRPV points out that Commission precedent distinguishes between must carry “election” letters and carriage “requests” or “demands.” It also encourages negotiations between the parties.<sup>11</sup> Indeed, KRPV states that Section 76.7(a)(4)(ii) of the Commission’s rules requires a complaint to “set forth [negotiation] steps taken by the parties to resolve the problem.”<sup>12</sup> In that light, KRPV points to three documents to demonstrate an ongoing course of negotiations between TCI and itself: 1) the first is its September 30, 1999 must carry election letter;<sup>13</sup> 2) the second is TCI’s November 12, 1999 letter which opened the door for signal testing;<sup>14</sup> and 3) KRPV’s September 11, 2000 letter entitled “Notification of Violation and Demand for Immediate Carriage.”<sup>15</sup>

7. KRPV argues that TCI’s reliance on its August 7, 2000 letter as the trigger for the instant complaint is misplaced.<sup>16</sup> KRPV states prior to this letter, there was a June 26, 2000 letter from TCI in which KRPV was notified that there were “signal quality problems” involving the reception of KRPV on the cable systems.<sup>17</sup> KRPV states that it responded to the June 26<sup>th</sup> letter on July 5, 2000, informing TCI that it was in the process of improving its signal, thanking TCI for its cooperation and stating that it looked forward to the commencement of carriage of its signal.<sup>18</sup> KRPV asserts that, taken together, TCI’s November 12<sup>th</sup> and June 26<sup>th</sup> letters and KRPV’s July 5<sup>th</sup> letter clearly indicate an ongoing course of negotiations between TCI and KRPV concerning improving the quality of the station’s signal as a prelude to carriage. As a result, KRPV states that it properly regarded TCI’s August 7<sup>th</sup> letter as merely a new negotiation angle, specifically supplementing its previous June 26<sup>th</sup> negotiation letter and addressing for the first time that KRPV’s signal might be made available to TCI via “digital satellite.”<sup>19</sup> KRPV maintains that it saw no need to challenge the August 7<sup>th</sup> letter’s mischaracterization of KRPV’s July 5<sup>th</sup> letter as a “must carry election letter” or to take it as TCI’s final carriage decision because it believed that negotiations were still continuing. When further oral contacts failed to result in an agreement for carriage, however, KRPV states that it then sent its September 11, 2000 formal demand for carriage.

8. KRPV argues that it took great pains to label its September 11<sup>th</sup> letter as a formal carriage demand letter within the meaning of Section 76.61(a) of the Commission’s rules and had every expectation that TCI would respond within 30 days. KRPV asserts that TCI’s action in remaining mute and then trying to re-set the complaint “clock” to an earlier date mischaracterizes the parties’ earlier negotiations.

9. We grant KRPV’s complaint. First, with regard to the procedural issue, we do not agree with TCI that KRPV’s complaint was untimely filed. Upon review, it is clear that KRPV’s September 11, 1999 letter was strictly a must carry/retransmission consent election notification for the January 1, 2000 election period, as required by Section 76.64(f)(2) of the Commission’s rules.<sup>20</sup> The subsequent

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<sup>11</sup>See e.g., *Astroline Communications LP*, 13 FCC Rcd 9429, 9431-32 (1998); and *Reading Broadcasting, Inc.*, 15 FCC Rcd 10654, 10655 (2000).

<sup>12</sup>47 C.F.R. §76.7(a)(4)(ii).

<sup>13</sup>Reply at Exhibit A.

<sup>14</sup>*Id.* at Exhibit B.

<sup>15</sup>*Id.* at Exhibit C.

<sup>16</sup>*Id.* at Exhibit D.

<sup>17</sup>*Id.* at Exhibit E.

<sup>18</sup>*Id.* at Exhibit F.

<sup>19</sup>*Id.* at Exhibit D.

<sup>20</sup>47 C.F.R. §76.64(f)(2).

correspondence and telephone contacts between KRPV and TCI appear to be in the nature of negotiations for carriage and attempts to resolve any problems with regard to KRPV's signal quality. While TCI asserts that its August 7, 2000 letter was its formal denial of carriage, KRPV had not, at that point, made an actual demand for carriage, pursuant to Section 76.61(a) of the Commission's rules.<sup>21</sup> KRPV did file such a demand, on September 11, 2000, and its complaint was filed within the required sixty days, as required by Section 76.61(a)(5) of the Commission's rules.<sup>22</sup>

10. A review of the signal strength test TCI conducted of KRPV's signal at its Farmington headend, pursuant to the Commission's engineering criteria, indicates that KRPV achieves a signal strength above the minimum signal strength criteria established by the Commission.<sup>23</sup> The fact that KRPV delivers its signal via a translator is not an obstacle to its carriage, but merely a means of transmission. TCI did not refute the results of this of this test in its reply herein. We note that neither TCI nor KRPV submitted a signal strength test for TCI's Gallup system. Since this was not an issue raised in the complaint, we can only assume that signal quality was not an issue with regard to the Gallup cable system. In view of the forgoing, we find the grant of KRPV's complaint to be in the public interest.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition filed by Prime Time Christian Broadcasting, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534). TCI Cablevision of New Mexico, Inc. **IS ORDERED** to commence carriage of KRPV on its cable systems serving Farmington and Gallup, New Mexico sixty (60) days from the release date of this Order.

12. **IT IS FURTHER ORDERED** that KRPV shall notice TCI 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

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<sup>21</sup>47 C.F.R. §76.61(a).

<sup>22</sup>47 C.F.R. §76.61(a)(5).

<sup>23</sup>For UHF stations, such as KRPV, the minimum signal strength criteria is -45 dBm at the input terminals of the signal processing equipment, or a baseband video signal.