

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

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| In the Matter of: |) | |
| |) | |
| Sage Broadcasting Corporation |) | |
| |) | CSR 5841-M |
| v. |) | |
| |) | |
| Brownwood Cable Television Services, Inc. |) | |

MEMORANDUM OPINION AND ORDER

Adopted: May 31, 2002**Released: June 5, 2002**

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Sage Broadcasting Corporation ("Sage"), licensee of low power television ("LPTV") station KIDU-LP, Brownwood, Texas, filed a complaint pursuant to Section 614 of the Communications Act, as amended, and Sections 76.7 and 76.61(a) of the Commission's Rules, claiming entitlement to mandatory carriage of KIDU-LP in the communities of Brownwood, Santa Anna, Cross Plains, Rising Star, Clyde, and Baird, Texas (the "Communities"), on the cable systems of Brownwood Cable Television Services, Inc. ("Brownwood").¹ Brownwood filed an opposition to the complaint and Sage filed a reply.

II. DISCUSSION

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" LPTV stations in certain limited circumstances.² KIDU-LP is located in the Abilene-Sweetwater, Texas DMA as are the Communities served by Brownwood's cable systems. Sage asserts that KIDU-LP is a "qualified low power station" for must carry purposes pursuant to Section

¹ See 47 C.F.R. §§ 76.7 & 76.61(a).

² An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's rules will be considered "qualified" if: (1) it broadcasts at least the minimum number of hours required under 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming by the LPTV station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system are both located outside the largest 160 Metropolitan Statistical Areas on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system. See 47 U.S.C. §§ 534(c)(1) & 534(h)(2); 47 C.F.R. §§ 76.55(d) & 56(b)(3).

76.55(d) of the Commission's rules. By letter dated August 8, 2000, Sage notified Brownwood of the substitution of the programming of the UPN (The Paramount Network) in place of the FOX Network programming about October 1, 2000. The letter also stated "We request 'must carry' for KIDT-LP [sic] on your Brownwood system as of October 1, 2000 in accordance with sections 76.55(d) and 76.56(b)(3) of the FCC's rules," and asked for the date carriage of the station would commence on Brownwood's cable systems serving the Communities.³ Brownwood did not respond to Sage's letter, nor did it begin carrying the station. Sage states that it took steps to inform Brownwood of KIDU-LP's must carry entitlement and to obtain a carriage agreement. These included sending Brownwood another letter dated December 5, 2001 demanding carriage of KIDU-LP, and engaging in conversations about the matter with Brownwood personnel. Sage contends that the December 5, 2001 letter started the 90-day clock for response and complaint under Section 76.61(a)(2). Sage further contends that this second letter provided Brownwood with information necessary to understand the station's must carry rights, and notice of the intention to file a must carry complaint if carriage of the station did not commence. Sage states that Brownwood also never responded to this letter, and argues that its complaint, which is filed within 90 days of the December 5, 2001 letter, timely seeks enforcement of must carry rights for KIDU-LP on Brownwood's cable systems.⁴

3. Sage identifies the following factors as establishing that KIDU-LP is a qualified low power station: the city of Brownwood's population is below 35,000; all of the Communities are located outside of the largest 160 Metropolitan Statistical Areas; there is no full power television station licensed to any county where the Communities are located; no full power television station available on Brownwood's cable systems is carrying the UPN or PAX Network programming; and KIDU-LP is located within 35 miles of the cable systems' principle headend and places a "good quality" signal over that headend.⁵ Contending that it has exhausted reasonable efforts to resolve this matter, Sage requested an order for carriage of KIDU-LP.

4. Brownwood argues in response that the complaint was untimely filed on January 16, 2002, which is more than 60 days following Sage's must carry request set forth in the letter dated August 8, 2000. Brownwood also contends that Sage failed to establish that KIDU-LP is a "qualified low power station" as defined in the Commission's rules.

5. We dismiss Sage's complaint as untimely filed. As the Bureau previously explained in *Friendly Bible Church, Inc. v. Viacom Cable*⁶ ("*Friendly Bible Church*"), the Commission's rules concerning the must-carry complaint procedures are quite clear: "No must-carry complaint filed pursuant to Section 76.61 will be accepted by the Commission if filed more than sixty (60) days after the ... denial by a cable television system operator of a request for carriage"⁷ In denying the application for review in *Friendly Bible Church*, the Commission explained that adoption of a time limit for must-carry complaints appropriately balanced the interests of broadcast stations in asserting their carriage rights with the interests of cable systems in having certainty in their channel and carriage obligations to broadcasters, together with the interests of subscribers in having minimal viewing disruption and certainty of service. The Commission added that if within thirty days of the broadcaster's initial request for carriage or for channel position, the cable operator either denied it or did not respond to it, the broadcaster then had only

³ Complaint at 1-3. Sage states that by typographical error the station's call letters were shown incorrectly in the August 8 letter. *Id.* at 2 n. 1. The programming change did not occur until February 2001. *Id.* at 2.

⁴ *Id.*

⁵ *Id.* at 3.

⁶ 9 FCC Rcd 7907 (CSB 1994), *app. for rev. denied*, 11 FCC Rcd 17115 (1996).

⁷ *Friendly Bible Church*, 9 FCC Rcd at 7910.

sixty days to file a complaint with the Commission.⁸

6. Thus, the Commission will accept must-carry complaints filed pursuant to Section 76.61(a) if they are filed within 60 days after the denial by a cable television system operator of a request for carriage, or the failure of a cable operator to respond to such request within 30 days. We find that Sage's August 8, 2000 letter made a clear and unequivocal request for "must carry" of KIDU-LP, thus triggering the 30-day period for Brownwood either to commence carrying the station or provide a written response denying carriage. Absent a response from Brownwood, the rules provided Sage a 60-day period in which to file a must carry complaint with the Commission. Sage identifies its subsequent letter dated December 5, 2001, as its must carry request. The fact that Sage also sent Brownwood a later request for carriage does not toll the Commission's filing period.⁹ Because Sage's complaint was not filed within sixty days of Brownwood's failure to respond to its carriage request of August 8, 2000, its complaint must be dismissed, pursuant to Section 76.61(a)(5)(ii) of the Commission's rules.¹⁰

7. We reject Sage's arguments in reply suggesting that its December 5, 2001 letter, rather than its August 8, 2000 letter, triggered the start of the window within which to file a must carry complaint. First, the August 8, 2000 letter expressly "request[ed] 'must carry' for KIDT-LT [sic] on your Brownwood system as of October 1, 2000 in accordance with sections 76.55(d) and 76.56(b)(3) of the FCC's rules."¹¹ Second, nothing in Section 76.64(f) of the rules suggests that a change of network affiliation converts an existing station to a new station with new must carry rights or tolls the filing deadlines discussed herein, as suggested by Sage. Third, vague references to conversations between Sage and Brownwood personnel¹² fail to establish that ongoing negotiations existed sufficient to require a different outcome, as in *Prime Time Christian Broadcasting, Inc.*¹³ Fourth, the letters considered in *Astroline Communication LP*¹⁴ and *Reading Broadcasting, Inc.*¹⁵ and held to trigger the 30/60-day filing deadlines made carriage requests no more clearly than Sage's August 8, 2000 letter. Fifth, the resolution of the mailing date of a station's election-letter in *Gannon University Broadcasting*¹⁶ has no bearing on our determination that the August 8, 2000 letter constituted a carriage request. Finally, Sage's complaint concedes that "Sage's August 8, 2001 (Exhibit A) requested carriage of KIDU-LP on Brownwood's subject cable system."¹⁷ In view of the dismissal of the complaint as untimely filed, we need not consider whether Station KIDU-LP is a "qualified lower power station" for must carry purposes.

⁸ *Friendly Bible Church*, 11 FCC Rcd 17115 (1996).

⁹ See *Astroline Communications L.P v. Century Cable Management Corporation*, 13 FCC Rcd. 2220 (1998).

¹⁰ 47 C.F.R. § 76.61(a)(5)(ii).

¹¹ Reply at Exhibit A. The letter closes, "Please advise us of the date you will commence carriage" of the station. *Id.*

¹² *Id.* at 2.

¹³ 16 FCC Rcd 7919 (CSB 2001).

¹⁴ 13 FCC Rcd 9429 (CSB 1998).

¹⁵ 15 FCC RCD 10654 (CSB 2000).

¹⁶ 10 FCC Rcd 8619 (CSB 1995).

¹⁷ Complaint at p. 2.

III. ORDERING CLAUSES

8. Accordingly, **IT IS HEREBY ORDERED**, that the Must Carry Complaint filed January 16, 2002, by Sage Broadcasting Corporation, licensee of low power television station KIDU-LP, Brownwood, Texas **IS DISMISSED** as untimely filed.

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

¹⁸ 47 C.F.R. § 0.283.