

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

In the Matter of:
Pappas Southern California License, LLC
v.
Adelphia Cable
Request for Mandatory Carriage
of Television Station KAZA-TV, Avalon,
California
CSR-5941-M

MEMORANDUM OPINION AND ORDER

Adopted: December 3, 2002

Released: December 6, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Pappas Southern California License, LLC ("Pappas"), licensee of television broadcast station KAZA-TV (UHF Channel 54), Avalon, California ("KAZA"), has filed a must carry complaint with the Commission pursuant to Sections 76.7 and 76.61(a)(3) of the Commission's rules, claiming that Adelphia Communications ("Adelphia") has failed to commence carriage of KAZA on Adelphia's cable systems serving Anaheim, Hacienda Heights, and Ventura, California (the "Communities").

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, 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, such as KAZA, are entitled to assert mandatory carriage rights on cable systems located within the station's market.

1 47 C.F.R. §§ 76.7 and 76(a)(3).

2 By letter dated November 5, 2002, Pappas stated that KAZA is now being carried on Adelphia's Anaheim and Hacienda Heights cable systems and requested that the complaint be dismissed with respect to those systems, but remain pending with respect to the Ventura system.

3 8 FCC Rcd 2965, 2976-77 (1993).

4 Section 614(h)(1)(C) of the Communications Act, 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 requires that a commercial broadcast station's market be defined by Nielsen Media Research's DMAs. See 47 C.F.R. § 76.55(e).

designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁵ One method of doing so is for the cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to the cable system's principal headend.⁶ For UHF commercial television stations such as KAZA, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45dBm.⁷ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁸

III. DISCUSSION

4. KAZA operates on UHF Channel 54 and is a new full power commercial television station licensed to serve Avalon, California, which is in the Los Angeles DMA.⁹ Adelphia operates cable television systems in the Communities, which are also in the Los Angeles DMA.¹⁰ Therefore, KAZA qualifies as a local station entitled to mandatory carriage on Adelphia's cable systems, providing it delivers a good quality signal to the cable systems' principal headends.¹¹

5. We grant KAZA's must carry complaint with respect to Adelphia's Ventura cable system, conditioned upon KAZA delivering a good quality signal to the Ventura system principal headend. Pappas demonstrated in its complaint that it notified Adelphia by letter dated May 22, 2001 of its proposed launch of KAZA on June 23, 2001 and of its must carry election in accordance with Section 76.64(f) of the Commission's rules.¹² After providing Adelphia with information about subsequent proposed launch dates for KAZA by letters dated June 25, 2001 and July 28, 2001, Pappas notified Adelphia by letter dated September 7, 2001, of its failure to carry KAZA, pursuant to Section 76.61(a) of the Commission's rules, but received no response to that notice.¹³ Subsequently, Pappas' outside consultant and Adelphia personnel exchanged correspondence during the period from October 31, 2001 until July 13, 2002, when Adelphia informed Pappas that KAZA would be carried on the Hacienda Heights system on August 5, 2002, on the Anaheim system on August 13, 2002, and on the Ventura system on September 30, 2002. Pappas states that, despite these written and verbal assurances, it has deemed it necessary to file this complaint to protect its carriage rights because carriage of KAZA has been repeatedly delayed. Pappas subsequently informed the Commission that carriage had commenced on the Hacienda Heights and Anaheim systems, but had not commenced as promised on the Ventura system.¹⁴

⁵ See *Must Carry Order*, 8 FCC Rcd at 2991.

⁶ 47 C.F.R. § 76.55(c)(3).

⁷ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁸ *Must Carry Order*, 8 FCC Rcd at 2991.

⁹ Complaint at 1-2.

¹⁰ *Id.*

¹¹ See *Must Carry Order*, 8 FCC Rcd at 2976-77 (1993).

¹² Complaint at 2-4; see 47 C.F.R. § 76.64(f).

¹³ Complaint at 2-4.

¹⁴ See *supra* n.2.

6. 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 Pappas' May 22, 2001 notice of must carry election, together with its September 7, 2001 letter providing Adelphia with notice of the failure to carry KAZA, constituted a clear and unequivocal request for carriage of KAZA. We also find that the correspondence between Pappas and Adelphia, including particularly Adelphia's July 13, 2002 representation that carriage of KAZA would commence on the Hacienda Heights system on August 5, 2002, on the Anaheim system on August 13, 2002, and on the Ventura system on September 30, 2001, tolled the 60-day period within which Pappas could file a must carry complaint with the Commission.¹⁵ Since Pappas filed its Complaint on July 22, 2002, which is less than 60 days from July 13, 2002, we find the complaint to be timely filed.

7. Adelphia filed no response to the Complaint nor made any showing concerning the quality of the KAZA signal at the principal headends of its cable systems serving the Communities. Pappas none-the-less represented that it would pay for any necessary equipment to ensure a good quality KAZA signal at those headends.¹⁶

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the complaint filed by Pappas Southern California License, LLC **IS GRANTED** with respect to Adelphia's Ventura, California system, and **IS DISMISSED** with respect to Adelphia's cable systems serving Anaheim and Hacienda Heights, California.

9. **IT IS FURTHER ORDERED** that Adelphia Communications **SHALL COMMENCE CARRIAGE** of television station KAZA-TV (TV) on Channel 54 of its cable system serving Ventura, California, within 60 days from the date that station KAZA delivers a good quality signal to the principal headend of its cable system serving Ventura, California.

10. This action is taken pursuant to authority delegated pursuant to Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹⁵ See *Complaint of Reading Broadcasting, Inc. Against Comcast Cablevision of Gloucester County*, 13 FCC Rcd 22587 (CSB 1998) (time for filing complaint tolled by engagement in negotiations regarding carriage); *Complaint of Telecino, Inc. Against TCI Television of Puerto Rico*, 12 FCC Rcd 17493 (CSB 1997) (negotiations regarding carriage held to toll time for filing must carry complaint).

¹⁶ Complaint at 5-6.

¹⁷ 47 C.F.R. § 0.283.