

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

In the Matter of:
Pappas Southern California License, LLC
v.
Charter Communications
Request for Mandatory Carriage of
Television Station KAZA-TV
CSR-5807-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 ("KAZA"), Channel 54, Avalon, California, filed the above-captioned must carry complaint against Charter Communications ("Charter"), asserting mandatory carriage rights for KAZA on Charter's cable systems serving Big Bear, Boron, Hesperia, Lake Arrowhead, Mojave, North Edwards, Rosamond, Angelus Oaks and Victorville, California ("cable communities").

II. BACKGROUND

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

1 Complaint at 1. On January 15, 2002, Pappas amended its complaint and deleted Alhambra, Monterey and Long Beach, California because Charter began to carry KAZA on the cable systems serving those communities. On May 24, 2002, Pappas deleted the systems serving San Bernardino (including Riverside, Rancho Cucamonga and Yupaica, but not Angelus Oaks), Los Angeles County, Malibu and Thousand Oaks/Hidden Hills, again because Charter commenced carriage of KAZA on the cable systems serving those communities.

2 8 FCC Rcd 2965, 2976-2977 (1993).

3 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 that delineate television markets based on viewing patterns.

geographic market 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.⁴ 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.⁵ For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45 dBm.⁶ 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.⁷

III. DISCUSSION

4. In support of its complaint, KAZA states that it is a full-power commercial television station licensed to Avalon, California, which is in the Los Angeles, California DMA.⁸ It states further that Charter operates several cable television systems that are also located in the Los Angeles, California DMA.⁹ KAZA contends that because it is located within the same DMA as Charter's cable systems serving the cable communities, it is entitled to must carry status on Charter's systems.¹⁰ KAZA asserts that Charter did not respond to its September 7, 2001 demand for mandatory carriage in the cable communities within 30 days of receipt of such request as required by the Commission's rules.¹¹ KAZA states that it does not contest Charter's findings that the Station does not provide a good quality signal to Charter's Big Bear, Boron, Hesperia, Lake Arrowhead, Mojave, North Edwards, Rosamond and Victorville headends, and maintains that it is committed to provide a good quality signal to each of the above headends through the use of specialized equipment, such as microwave or fiber.¹²

5. In opposition, Charter argues that the instant complaint should be dismissed because KAZA admittedly does not deliver a good quality signal to the principal headends serving the cable communities.¹³ Charter asserts that it has provided KAZA with signal strength test results that show that the Station does not provide a good quality signal to the relevant principal headends, as required by the Commission's rules.¹⁴ Charter states that Angelus Oaks is served by a stand-alone system and not by its

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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(3).

⁴ *See Must Carry Order*, 8 FCC Rcd at 2991.

⁵ 47 C.F.R. § 76.55(c)(3).

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

⁷ *Must Carry Order*, 8 FCC Rcd at 2991.

⁸ Complaint at 1 and 6.

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 3-4.

¹² *Id.* at 11-12.

¹³ Opposition at 2.

¹⁴ *Id.*

San Bernardino system, as KAZA assumes.¹⁵ Charter asserts that the KAZA signal strength at the Angelus Oaks headend is also inadequate.¹⁶ Charter states further that the cable communities are separated from KAZA by geographical barriers such as the San Gabriel Mountains and the San Bernardino National Forest.¹⁷ Charter asks the Commission to deny or dismiss the instant complaint because KAZA fails to provide Grade B contour coverage to the cable communities.¹⁸ In reply, KAZA states that it understands that its must carry rights depend on whether or not it provides a good quality signal to the Charter principal headends at issue, and reiterates its commitment to deliver the Station's signal to Charter's principal headends through the use of specialized equipment.¹⁹

6. It is undisputed that KAZA does not deliver a good quality over-the-air signal to the headends serving the cable communities. We note, however, that, pursuant to the Commission's rules, a station's failure to provide the requisite over-the-air signal quality to a cable system's principal headend will not foreclose its carriage on a cable television system if the station, at its own expense, provides the cable operator with the specialized equipment necessary to improve the station's signal to an acceptable quality.²⁰ We find that KAZA has satisfied the criteria for carriage by agreeing to pay for the cost of delivering a good quality signal to the Charter headends at issue. In that regard, the Commission has stated that specialized equipment may be employed to deliver a good quality signal to a cable system headend. The Commission, in its *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues Clarification Order* ("Must Carry Clarification Order"), after re-emphasizing that it was the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend, stated:

This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements...²¹

Consistent with the *Must Carry Clarification Order*, the use of signal enhancement equipment as a means of providing a signal of sufficient must carry strength has been approved in numerous proceedings.²² Based on the above, we grant KAZA's must carry complaint conditioned upon the delivery of a good quality signal to Charter's principal headends serving Big Bear, Boron, Hesperia, Lake Arrowhead, Mojave, North Edwards, Rosamond, Angelus Oaks and Victorville, California.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ Reply at 2.

²⁰ *Must Carry Order*, 8 FCC Rcd at 2991; *see also* 47 U.S.C. § 534(h)(1)(B)(iii).

²¹ *Must Carry Clarification Order*, 8 FCC Rcd 4142, 4143 (1993).

²² *See, e.g., CTV of Derry, Inc.*, 13 FCC Rcd 12484 (1998)(a Scala parareflector provided by station); *Montgomery Cablevision, L.P.*, 10 FCC Rcd 2732 (1995)(antenna cut to frequency and pre-amplifier used); and *Greater Dayton Public Television*, 10 FCC Rcd 1055 (1995)(a 12.5dBm gain antenna and pre-amplifier provided by station).

IV. ORDERING CLAUSES

7. 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**. Charter Communications **IS ORDERED** to commence carriage of television station KAZA-TV on its cable systems serving Big Bear, Boron, Hesperia, Lake Arrowhead, Mojave, North Edwards, Rosamond, Angelus Oaks and Victorville, California within 60 days from the date that station KAZA-TV delivers a good quality signal to Charter's principal headends.

8. This action is taken pursuant to authority delegated pursuant to Section 0.283 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

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²³ 47 C.F.R. § 0.283.