

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

In the Matter of: )
African-American Broadcasting )
Company of Bellevue, Inc. ) CSR-5780-M
v. )
San Juan Cable & Construction )
Request for Mandatory Carriage of )
Television Station KWOG(TV), )
Bellevue, Washington )

MEMORANDUM OPINION AND ORDER

Adopted: January 9, 2002

Released: January 11, 2002

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

I. INTRODUCTION

1. African-American Broadcasting Company of Bellevue, Inc. ("African-American"), licensee of television broadcast station KWOG(TV) (Ch. 51), Bellevue, Washington ("KWOG" or the "Station") filed the above-captioned must carry complaint against San Juan Cable & Construction ("San Juan"), for failing to carry KWOG on its cable system serving the Lummi Indian Reservation.1 No opposition to the complaint was received.

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.2 A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.3 A DMA is a geographic market designation that defines each television market exclusive of

1 African-American notes that the Station's prior call sign was KBEH(TV). Complaint at 1.

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

3 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 base on viewing patterns. See 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

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 station that is located in the same television market is not entitled to carriage.<sup>4</sup> One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>5</sup> Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>6</sup>

### III. DISCUSSION

4. In support of its complaint, KWOG states that it is a full power television station licensed to Bellevue, Washington, which is in the Seattle-Tacoma DMA.<sup>7</sup> It states further that San Juan operates a cable television system, which is also in the Seattle-Tacoma DMA.<sup>8</sup> KWOG asserts that it formally requested that San Juan commence carriage of its signal on the cable system at issue.<sup>9</sup> KWOG claims that San Juan did not respond to its request for mandatory carriage in violation of the Commission's rules, which require cable operators to respond in writing to requests for carriage within 30 days of receipt of such requests.<sup>10</sup> KWOG requests that the Commission order San Juan to commence carriage of its signal on the cable system in question.<sup>11</sup>

5. Section 76.55(e) of the Commission's rules provides that commercial television broadcast stations, such as KWOG, are entitled to carriage on cable systems located in the same DMA.<sup>12</sup> As noted above, 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.<sup>13</sup> We find that San Juan has failed to meet its burden. San Juan did not respond within 30 days to KWOG's letter requesting carriage as required by the Commission's rules nor did it file an opposition to KWOG's must carry complaint.<sup>14</sup> Thus, we find that KWOG is entitled to mandatory carriage on the San Juan cable system at issue. Based on the foregoing, we grant KWOG's complaint.

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<sup>4</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>5</sup> 47 C.F.R. § 76.55(c)(3).

<sup>6</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>7</sup> Complaint at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* and Attachment A.

<sup>10</sup> Complaint at 2 and Attachment A. See 47 C.F.R. § 76.61(a)(2).

<sup>11</sup> Complaint at 3.

<sup>12</sup> 47 C.F.R. § 76.55(e).

<sup>13</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>14</sup> 47 C.F.R. § 76.55(c)(3).

**IV. ORDERING CLAUSES**

6. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the must carry complaint filed by African-American Broadcasting Company of Bellevue, Inc., licensee of television broadcast station KWOG(TV), Bellevue, Washington, against San Juan Cable & Construction **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that San Juan **SHALL COMMENCE CARRIAGE** of the KWOG signal on its cable system serving the Lummi Indian Reservation, within sixty (60) days from the date of the release of this *Order*.

8. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein, Chief  
Consumer Protection and Competition Division  
Cable Services Bureau

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<sup>15</sup> 47 C.F.R. § 0.321.