

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

In the Matter of:	)	
	)	
Pappas Southern California License, LLC	)	
	)	CSR-5819-M
v.	)	
	)	
Time Warner Communications	)	
	)	
Request for Mandatory Carriage of	)	
Television Station KAZA-TV,	)	
Avalon, California	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 11, 2002**

**Released: March 13, 2002**

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

**I. INTRODUCTION**

1. Pappas Southern California License, LLC ("Pappas"), permittee of television broadcast station KAZA-TV, Channel 54, Avalon, California ("KAZA" or the "Station") filed the above-captioned must carry complaint against Time Warner Communications ("Time Warner") for failing to carry KAZA on its cable system serving Barstow, California (the "cable community"). Time Warner filed an opposition to which Pappas 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.

<sup>1</sup> 8 FCC Rcd 2965, 2976-2977 (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). Section 76.55(e) of the Commission's rules, 47 C.F.R. § 76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs.

### III. DISCUSSION

3. In support of its complaint, KAZA states that it is licensed to Avalon, California, which is in the Los Angeles, California DMA. It states further that Time Warner operates a cable television system in Barstow, California, which is also in the Los Angeles DMA. KAZA contends that because it is located within the same DMA as the Time Warner Barstow cable system serving the cable community, it is entitled to mandatory carriage on that system. KAZA asserts that it formally requested that Time Warner commence carriage of the Station's signal on the cable system at issue.<sup>3</sup> KAZA claims that Time Warner did not respond to its request for mandatory carriage in violation of Section 76.61(a)(2) of the Commission's rules, which requires cable operators to respond in writing to requests for carriage within 30 days of receipt of such requests.<sup>4</sup> According to KAZA, it is committed to do whatever is needed to provide Time Warner with a good quality signal.<sup>5</sup> KAZA requests that the Commission order Time Warner to commence carriage of its signal on the cable system serving the cable community.

4. In opposition, Time Warner<sup>6</sup> states that it measured KAZA's signal strength at its system headend and determined that the Station's signal strength is inadequate.<sup>7</sup>

5. In reply, KAZA contends that Time Warner's opposition to carriage on signal quality grounds is untimely in light of the operator's failure to respond to KAZA's must carry demand.<sup>8</sup> KAZA reiterates its request that the Commission order Time Warner to commence carriage of the KAZA signal once the Station delivers a good quality signal to the cable system.<sup>9</sup>

6. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") provides that a cable operator is not required to carry a local commercial broadcast station that does not deliver a good quality signal to the principal headend of a cable system.<sup>10</sup> Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, we believe that the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. With respect to the standard to be used to determine what constitutes a good quality signal at a cable system's headend, the 1992 Cable Act adopted a standard for VHF and UHF commercial stations.<sup>11</sup> For VHF commercial television station signals, the standard is -49 dBm; for UHF commercial television station signals, the standard is -45 dBm.<sup>12</sup>

---

<sup>3</sup> Complaint at 2 and Exhibit B.

<sup>4</sup> Complaint at 2-3. *See* 47 C.F.R. § 76.61(a)(2).

<sup>5</sup> Complaint at 3.

<sup>6</sup> In its opposition, Time Warner Communications asserts that the legal owner of the Barstow cable system is Time Warner Entertainment-Advance/Newhouse Partnership, which conducts business in the name of Time Warner Cable. Opposition at 1.

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

<sup>8</sup> Reply at 2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> 47 U.S.C. § 534(h)(1)(B)(iii).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* *See* 47 C.F.R. § 76.55(e)(3).

7. In this instance, Time Warner's signal quality tests determined that KAZA had no signal strength at its Barstow headend.<sup>13</sup> KAZA has not disputed the results of these tests. However, KAZA has committed to acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide Time Warner with a good quality signal. KAZA, by committing to provide any necessary equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.<sup>14</sup> Thus, we find that KAZA is entitled to mandatory carriage on the cable system at issue.

#### 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 must carry complaint filed by Pappas Television, L.L.P., permittee of television broadcast station KAZA, Avalon, California against Time Warner Communications **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that Time Warner **SHALL COMMENCE CARRIAGE** of the KAZA signal on its Barstow, California cable system within sixty (60) days from the date that KAZA provides a good quality signal to Time Warner's Barstow headend.

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

FEDERAL COMMUNICATIONS COMMISSION

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

---

<sup>13</sup> Opposition at 2.

<sup>14</sup> See *Must Carry Order*, 8 FCC Rcd at 2991. See, e.g. *WMPF, Inc.* 11 FCC Rcd 17264 (1996); *KSLs, Inc.*, 11 FCC Rcd 12718 (1996). See also 47 U.S.C. § 534(h)(1)(B)(iii).

<sup>15</sup> 47 C.F. R. § 0.321.