

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

In the matter of:
Entravision Holdings, LLC
v.
Comcast Cable Communications, Inc.
Request for Carriage
CSR-6034-M

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 2003

Released: April 9, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Entravision Holdings, LLC, licensee of television broadcast station WJAL, Hagerstown, Maryland ("WJAL") filed the above-captioned complaint against Comcast Cable Communications, Inc. ("Comcast"), for its failure to carry WJAL on its cable systems serving Arlington, Prince William County, Dale City, Manassas, Manassas Park and Reston, Virginia. An opposition to this complaint was filed on behalf of Comcast to which WJAL replied. For the reasons discussed below, we grant the complaint.

II. DISCUSSION

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, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.

3. In support of its petition, WJAL argues that, despite a timely demand for carriage, Comcast has not agreed to carry its signal on its cable systems located within the Washington, D.C. DMA. WJAL states that it is a full-service UHF station whose city of license, Hagerstown, is located

18 FCC Rcd 2965, 2976-2977 (1993) ("Must Carry Order").

2Section 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)(2) of the Commission's rules requires that a commercial television station's market be defined by Nielsen Media Research's DMAs. See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

3Complaint at 2.

within the same DMA as Comcast's cable systems.⁴ WJAL states that Comcast's reason for its denial of carriage was that WJAL was not a "local" signal.⁵ WJAL maintains, however, that because it is part of the same DMA as Comcast's systems it is entitled to carriage at the time it provides a good quality signal to Comcast's principal headends.⁶ Although WJAL concedes that it does not provide such a signal at the present time, it states that it filed the instant complaint to preserve its must carry rights and it requests that the Commission require Comcast to carry its signal within sixty days after it delivers a good quality signal to Comcast's principal headends.

4. Comcast argues that WJAL's complaint should be denied because WJAL does not deliver a signal of sufficient strength to the principal headends serving the communities and makes no commitment to deliver such a signal either in its complaint or in its letters requesting carriage.⁷ Comcast states that the signal strength tests it submits confirm that WJAL does not provide a good quality signal and that Comcast is under no legal obligation to carry the station.⁸

5. WJAL states in reply that it is firmly committed to taking any measures necessary, at its own expense, to provide a signal of good quality to Comcast's cable systems.⁹ WJAL asserts that its current lack of a good quality signal does not make WJAL a distant station or disqualify it from the requested relief.¹⁰

6. The Communications 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.¹¹ 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, Congress adopted a standard for VHF and UHF commercial stations.¹² For VHF commercial television stations, the standard is -49 dBm; for UHF commercial television stations, the standard is -45 dBm.¹³

7. In this instance, Comcast's signal quality tests indicated that WJAL had no signal strength at its principal headends. WJAL has not disputed the results of these tests. However, WJAL has committed to acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide Comcast with a good quality signal. WJAL, by committing to provide any necessary equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.¹⁴ Thus, WJAL is entitled to mandatory carriage on the cable systems at issue.

⁴*Id.* at Exhibit A.

⁵*Id.* at 2 and Exhibit C..

⁶*Id.* at 3.

⁷Opposition at 1-2, citing Complaint at n. 1 and Exhibit B.

⁸*Id.* at 2.

⁹Reply at 2.

¹⁰*Id.* at 3.

¹¹47 U.S.C. § 534(h)(1)(B)(iii).

¹²*Id.*

¹³*Id.*; see 47 C.F.R. § 76.55(e)(3).

¹⁴See *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).

III. 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 Entravision Holdings, LLC **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that Comcast shall commence carriage of WJAL on its Arlington, Prince William County, Dale City, Manassas, Manassas Park, and Reston, Virginia cable systems within sixty (60) days from the date that WJAL provides a good quality signal to Comcast's principal headends.

10. This action is taken pursuant to authority delegated by Section 0.231 of the Commission's rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division
Media Bureau

¹⁵47 C.F.R. § 0.283.