

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

In the matter of:)	
)	
RSN West, LLC)	
v.)	CSR-6056-M
Falcon Telecable)	
d/b/a Charter Communications)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: April 24, 2003

Released: April 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. RSN West, LLC, licensee of low power television station K38FW, Stateline, Nevada (“RSN”) filed the above-captioned complaint against Falcon Telecable d/b/a Charter Communications (“Charter”) for its failure to carry RSN on its cable television systems in South Lake Tahoe and Meyer, California. Charter’s South Lake Tahoe system serves South Lake Tahoe in El Dorado County, California, and Stateline and other areas in Douglas County, Nevada. The Meyer system serves unincorporated areas of El Dorado County, California.¹ An opposition to this complaint was filed by Charter to which RSN replied. For the reasons discussed below, we grant RSN’s complaint with regard to those portions of Charter’s South Lake Tahoe cable system serving Douglas County, Nevada, and deny the remainder of the complaint.

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission’s rules require the carriage of “qualified” low power television (“LPTV”) stations in certain limited circumstances.² An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission’s rules will be considered “qualified” if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the LPTV station addresses local news and informational needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station’s community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system’s headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160

¹Opposition at 1 n. 1. See also Television & Cable Factbook 2002 at D-127 and D-147.

²47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

Metropolitan Statistical Areas on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.³

III. DISCUSSION

3. In support of its complaint, RSN states that, by letter dated September 13, 2002, it elected must carry status on Charter's South Lake Tahoe and Meyer cable systems, and that Charter failed to respond within 30 days.⁴ RSN also asserts that it is a qualified LPTV station eligible for must carry status on Charter's cable systems. RSN includes signal strength tests conducted at the headend of both systems which RSN states reflect that it provides the requisite good quality over-the-air signal to the headends.⁵

4. Charter in its opposition argues that RSN is not a "qualified" low power television station for must carry purposes and raises two objections. First, Charter states RSN has not provided adequate information concerning its local news and informational programs and, further, that the full power television stations licensed to Reno, Nevada adequately serve the local news and informational needs of Charter's subscribers. Secondly, Charter alleges that RSN does not provide a good quality signal to the headend of its Meyer cable system, and supports this with its own signal strength test.⁶ RSN in its Reply provides details of its local news and informational programming, and indicates that the television stations in Reno largely direct their local programming to the residents of Reno and Carson City and not to the South Lake Tahoe area. RSN also presents a Longley-Rice analysis which predicts that it provides a good quality signal to the Meyer cable headend. RSN further states that if necessary to resolve this issue, the parties should conduct a joint test at the headend.⁷

5. With regard to programming, RSN demonstrates that the station provides local news and informational programming directed to the communities and resorts and recreational facilities in the Lake Tahoe area not provided by the full power television stations in Reno. RSN explains that it "broadcast over 25 hours of locally oriented and locally produced news and informational programming that addressed local informational needs, such as weather and ski trail conditions, which are not adequately addressed by any full power television" station in Reno. RSN lists local programs and describes them in detail. RSN indicates that the programs provide "detailed micro-climate weather and outdoor conditions forecasts" such as daily local "road and travel information," "live condition reports from the local ski resorts," "school closures," and "information about community events and local activity updates... also interviews from local business and community leaders" as well as "local high school sports." RSN further explains that its daily newscasts feature live camera feeds from locations in the Lake Tahoe area.⁸

6. We find nothing in the record that demonstrates this type of local coverage is provided by the full power television stations located in Reno. Charter merely states that "numerous full power television broadcast stations licensed to Reno, Nevada... already adequately serve the local news and informational needs of Charter's subscribers," and provides a copy of *TV Guide* for Reno listing the early morning and evening programs of these stations. The *TV Guide* lists programs such as "News" and "CBS

³47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

⁴Complaint at 2 and Exhibit A.

⁵*Id.* at 2-5 and Exhibit B.

⁶Opposition at 2-4 and Exhibits 1 and 4.

⁷Reply at 3-8 and Exhibit 2.

⁸Complaint at 3-4, and Reply at 3-5.

News” with no description of the nature or content of the news programs.⁹

7. A more serious impediment, however, to RSN’s request for must carry status on Charter’s cable systems in the Lake Tahoe area is presented by the legal requirement that both the community of license of the LPTV station and the franchise areas of the cable system be located outside the largest 160 Metropolitan Statistical Areas (“MSA”) as of June 30, 1990.¹⁰ Charter’s Meyer cable system serves unincorporated areas of El Dorado County, California, and the South Lake Tahoe system serves South Lake Tahoe in El Dorado County, California, and Stateline and other areas in Douglas County, Nevada.¹¹ In 1990, El Dorado County, California was in the Sacramento, California MSA which was included in the largest 160 MSAs while Douglas County, Nevada was not in a MSA.¹² RSN, therefore, as a LPTV station, is not qualified to be carried on Charter’s Meyer cable system or on portions of the South Lake Tahoe system serving El Dorado County, California. RSN, however, qualifies under the requirement for low power must carry status on portions of the South Lake Tahoe system serving Douglas County, Nevada. When a “cable system is comprised of franchise areas both within and outside of the largest 160 MSAs..., the cable operator is obligated... to carry [the LPTV station] in that portion of its system outside of the largest 160 MSAs.”¹³ In view this disposition, we need not address the issue regarding the adequacy of the broadcast signal that RSN provides to Charter’s Meyer cable system.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, and Sections 76.55(d) and 76.56(b)(3) of the Commission’s rules,¹⁴ that the complaint filed by RSN West, LLC, **IS GRANTED** to the extent indicated herein, and is otherwise **DENIED**.

9. **IT IS FURTHER ORDERED**, pursuant to Sections 76.56 and 56.57 of the Commission’s rules¹⁵ that RSN shall notify Charter in writing of its channel position election within thirty days of the release date of this order.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission’s rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

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⁹Opposition at 4 and Exhibit 4.

¹⁰See 47 U.S.C. §534(h)(2); 47 C.F.R. 47 C.F.R. §76.55(d).

¹¹See Opposition at 1 n. 1. See also Television & Cable Factbook 2002 at D-127 and D-147.

¹²Statistical Abstracts of the United States 1992 at 32 and 903.

¹³*Complaint of Joan and Kenneth Wright v. Cox Communications*, 14 FCC Rcd 2071, 2076 (CSB 1999).

¹⁴47 U.S.C. §534; 47 C.F.R. §§76.55(d) and 76.56(b)(3).

¹⁵47 C.F.R. §§76.56 and 76.57.

¹⁶47 C.F.R. §0.283.