

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

In the matter of:
False Communications, LLC
v.
Allen’s TV Cable Service, Inc.
Request for Carriage
CSR-6097-M

MEMORANDUM OPINION AND ORDER

Adopted: May 30, 2003

Released: June 2, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. False Communications, LLC (“False”), licensee of low power television station KJUN-CA, Morgan City, Louisiana (“KJUN” or “the station”) filed the above-captioned complaint against Allen’s TV Cable Service, Inc. (“Allen”) for its failure to carry KJUN on its cable television system in St. Mary Parish and Assumption Parish, Louisiana. In St. Mary Parish, Allen serves Morgan City, Berwick and unincorporated St. Mary Parish. In Assumption Parish, Allen serves Bayou L’Ourse, Belle River and Pierre Port (the “cable communities”).¹ An opposition to this complaint was filed by Allen to which False replied. For the reasons and to the extent indicated below, we grant False’s complaint, but allow Allen additional time to conduct a signal strength test while KJUN is broadcasting.

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 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

¹Complaint at 1-2, and n.2. See also Television & Cable Factbook 2002 at D-566, D-579 and D-581.

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

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, Folsie states that by letter dated September 17, 2002, it elected must carry status on Allen's cable systems serving the New Orleans designated market area (DMA), and that Allen failed to respond or to commence carrying KJUN on its cable systems. Folsie further states that it wrote Allen again on January 9, 2003, complaining of lack of carriage, and Allen replied that it was not a "qualified" LPTV station.⁴ Folsie also explains that in its September 17 letter it "inadvertently referred to the New Orleans DMA, instead of the Baton Rouge, DMA, where Allen operates and where the station is located," and it listed the cable communities served by Allen in the Baton Rouge DMA where it was seeking must carry status.⁵ Folsie asserts in its complaint that it is a qualified LPTV station eligible for must carry status on Allen's cable system serving the cable communities.⁶

4. Allen, in its opposition, argues that KJUN is not a "qualified" LPTV station for must carry purposes. Allen alleges that KJUN does not provide a good quality signal to the headend of its cable system which is located in Morgan City, and supports this with signal strength tests.⁷ Allen claims, moreover, that Folsie has not provided adequate information to address the issue concerning whether it broadcasts local news, informational and children's programs, and, further, that the full power television stations carried by the cable system adequately serve the local news and informational needs of Allen's subscribers.⁸ Allen also points out that it currently carries a LPTV station licensed to Morgan City that provides local news and informational programming.⁹

5. Folsie in its reply explains that Allen's tests of its signal strength were improper because KJUN was not broadcasting at the time of the tests, and that it had informed the Commission by letter "that KJUN is temporarily not broadcasting."¹⁰ Folsie provides an affidavit from a broadcast engineer which states that Allen's tests "were performed at a location approximately three miles from KJUN's... transmitter site.... KJUN transmitting equipment... was not functioning properly, due to an apparent lightning strike which damaged the tower... [G]iven the close proximity of Allen Cable's principal headend... to... KJUN's transmitting equipment, if KJUN were operating at its normal... power, an acceptable signal strength would be received by... Allen."¹¹ Folsie also asserts that it broadcasts local news and informational programming "11 ½ hours... per day or 77 hours per week," and it describes these programs.¹² Further, Folsie argues that Allen's claim that full power television stations provide adequate local news and informational programming "is... flawed because it merely provides lists of programs that do not provide any specific stories geared toward Allen subscribers; instead, the program guides merely lists 'news'.... This is not surprising given that the... full power stations cited by Allen are all from Baton Rouge, which is approximately 50 miles from St. Mary Parish and 40 miles from

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

⁴Complaint at 1-2, and Exhibit A, B and C.

⁵*Id.* at 1-2, and n.1 and 2.

⁶*Id.* at 2-4.

⁷Opposition at 2-3, and Exhibit 1.

⁸*Id.* at 3-6.

⁹*Id.* at 5, n.14.

¹⁰Reply at 2, and n.4.

¹¹*Id.* at Exhibit A.

¹²*Id.* at 3-6, and Exhibits B, C, E, F, H and I.

Assumption Parish.”¹³ Regarding Allen’s statement that it already carries a LPTV station licensed to Morgan City that provides local programming, Folse claims “this programming is not relevant... because KWBK is a low power station, not a full power station.”¹⁴ Finally, regarding children’s programming, Folse states “KJUN airs ‘Close-Up’ which is... directed to fourth-to eighth graders and is hosted by children.” This show, according to Folse, is broadcast 30 minutes in English and then 30 minutes in Spanish three times a week.¹⁵

6. In general, as indicated below, we find in favor of Folse’s complaint and request for must carry status. With regard to Folse’s September 17, 2002, letter electing must carry status for KJUN on Allen’s cable system serving the New Orleans DMA when it should have specified the Baton Rouge DMA, this was an invalid request for must carry. The Commission’s rules require stations to elect either must carry or retransmission consent status at three year intervals. The last election had to be made by October 1, 2002, and became effective January 1, 2003. If a station failed to make a valid election, as occurred regarding KJUN, it is considered under the Commission’s rules to have elected must carry status by default.¹⁶ The Commission’s rules further provide in “default” situations, a cable operator shall carry the station on: (1) the channel number on which the station is broadcast over the air; (2) that cable channel on which it was carried by the cable system on July 19, 1985; or (3) the cable channel number on which the station was carried on January 1, 1992. If these channel numbers are not available because they are occupied by must carry television stations, the cable operator may place the television station on any channel in the basic service tier.¹⁷

7. With regard to local news and informational programming, Folse demonstrates that the station provides programming of this nature to the cable communities. Folse states it broadcast 77 hours of local programming weekly, and provides a detailed list and description of these programs. Local programs described by Folse include the Rosary, Spotlight on the Diocese (local religious programs), Newstalk10, Newstalk10 Week-in-Review (local news and events programs), Cooking at its Finest (features local non-profit organizations promoting fund raising events), Medical Milestones (features surgical and medical procedures performed by local doctors), Healthwise (local medical center discusses latest technology and answers questions), Sportsman’s Paradise (features “fish and hunt with area sportsman”) and the Beat (“ride-along” with local police agencies).¹⁸ Further, Folse indicates it broadcast at least three hours of children’s programming each week and describes this programming.¹⁹

8. We find nothing in the record that demonstrates significant local news and informational programming is provided to the cable communities by full power television stations located in Baton Rouge. Allen merely states that it “carries numerous full power television broadcast stations that adequately serve the local news and informational needs of... [its] subscribers,” and provides a copy of *TV Guide* which lists the programs carried on its cable channels. The *TV Guide* lists numerous programs such as “news” and “CBS News” with no description of the nature or content of these news programs. We note, however, that among these numerous programs there are two programs, “Good Morning Acadiana” and “Morning Baton Rouge,” which likely cover local news for the Baton Rouge area, but there is no description of these programs or indication that they provide significant local news and

¹³*Id.* at 6-7.

¹⁴*Id.* at 7 n.15.

¹⁵*Id.* at 8, and Exhibit B.

¹⁶47 C.F.R. § 76.64(f).

¹⁷47 C.F.R. § 76.57(f).

¹⁸Reply at 3-6, and Exhibits B, C, E, F, H and I.

¹⁹*Id.* at 8, and Exhibit B.

informational programming to the cable communities.²⁰ Although Allen also carries on its cable system a local LPTV station licensed to Morgan City, which appears to provide local programming to the cable communities, this does not nullify KJUN's status as a LPTV station "qualified" to be carried on Allen's cable system under the Commission's rules.²¹

9. Finally, LPTV stations eligible for must carry status are required by the Commission's rules to deliver a signal of good quality to the headends of cable television systems.²² The burden of proving that a station does not provide a good quality signal rests with the cable operator.²³ Although Allen conducted tests regarding the reception of KJUN's signal, which Allen states reflected that "KJUN fails to deliver a signal of adequate strength,"²⁴ and these tests appear to have complied with the standards in the Commission's rules,²⁵ these tests lack relevancy regarding the adequacy of KJUN's signal because they were conducted when the station was not broadcasting.²⁶ Folse explains in its reply that KJUN was not on the air at the time of Allen's tests because an apparent lightning strike had damaged its equipment, and provides an affidavit from a broadcast engineer attesting to this.²⁷ Folse also notified the Commission of the outage.²⁸ Indeed, it was noted in Allen's test results that, although "Can see tower of Origination" from the cable headend, a signal "Does not exist."²⁹ Thus, Allen's test results were consistent with KJUN being off the air. Based on this evidence, we conclude that Allen's tests are not relevant regarding the adequacy of KJUN's signal when it is broadcasting.

10. We therefore grant Folse's complaint and require Allen to commence carriage of KJUN within 60 days of the release date of this order unless Allen conducts, within 15 days of the release date of this order, new signal quality tests that demonstrate that KJUN does not meet the signal strength standards. If Allen believes that it is not obligated to carry KJUN based on the results of new tests, it may submit the results of the tests to the Commission's Media Bureau within 30 days of the release date of this order. The Media Bureau will then decide the issue on reconsideration.

IV. ORDERING CLAUSES

11. 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, 47 C.F.R. §§ 76.55(d) and 76.56(b)(3) that the complaint filed by Folse Communications, LLC **IS GRANTED** as conditioned herein.

12. **IT IS FURTHER ORDERED** that Allen's TV Cable Service may, within 15 days of the release date of this order, conduct new signal quality tests consistent with this order. If based on these tests, Allen believes that it is not obligated to carry KJUN on its cable system, it may submit the results of

²⁰Opposition at 4-5, and Exhibit 3.

²¹See 47 C.F.R. § 76.55(d). However, the Commission's rules limit the number of qualified LPTV stations a cable system is required to carry. 47 C.F.R. § 76.56(b)(3). Allen has not indicated that this limit has been reached.

²²47 C.F.R. §76.55(d)(4).

²³*Citrus County Association v. Mickelson Media*, 16 FCC Rcd 20,713, 20,717 (2001).

²⁴Opposition at 2-3.

²⁵47 C.F.R. § 76.61(a)(2).

²⁶*R y F Broadcasting v. Cable TV of Greater San Juan*, 14 FCC Rcd 6821, 6823 (CSB 1999).

²⁷Reply at 2-3, and Exhibit A.

²⁸Letter dated Feb. 26, 2003.

²⁹Opposition at Exhibit 1.

the tests to the Media Bureau within 30 days of the release date of this order. The Media Bureau will then decide the issue on reconsideration.

13. **IT IS FURTHER ORDERED** that Allen's TV Cable Service shall commence carriage of KJUN within sixty days after the release date of this order in the absence of new tests that demonstrates that KJUN does not provide an adequate signal. KJUN shall be carried on the channel of the cable system specified by Section 76.57(f) of the Commission's rules, 47 C.F.R. § 76.57(f).

14. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau