

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

In the Matter of:	)	
	)	
Price Broadcasting, Inc.	)	
v.	)	CSR-6187-M
Comcast Cable Communications, Inc.	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 17, 2003**

**Released: October 21, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Price Broadcasting, Inc., licensee of television broadcast station KUTF, Price, Utah (“KUTF”), filed the above-captioned complaint against Comcast Cable Communications, Inc. (“Comcast”), for its failure to carry KUTF on ten cable systems serving approximately 110 communities located in the Salt Lake City, Utah designated market area (“DMA”).<sup>1</sup> An opposition to this complaint was filed on behalf of Comcast to which KUTF 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 (“Must Carry Order”)*, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.<sup>2</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>3</sup>

3. In support of its complaint, KUTF states that it is a full-power, commercial television

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<sup>1</sup>See Appendix I.

<sup>2</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>3</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. *See* 47 C.F.R. § 76.55(e).

station that began broadcasting on March 8, 2003.<sup>4</sup> KUTF states that it has already entered into an agreement to be a Telefutura Network affiliate.<sup>5</sup> KUTF states that, by letter dated March 17, 2003, it formally requested carriage on its over-the-air channel, Channel 3, on Comcast's cable systems serving the referenced communities.<sup>6</sup> Comcast denied KUTF carriage, by letter dated April 30, 2003, indicating as its reason that KUTF failed to provide a good quality signal to Comcast's principal headends.<sup>7</sup> KUTF notes that, on May 29, 2003, it informed Comcast that it would deliver, at its own expense, a good quality signal to Comcast's headends.<sup>8</sup> KUTF states that, to date, Comcast has not agreed to carry its signal and it therefore filed the instant complaint in a timely manner in order to preserve its must carry rights.<sup>9</sup>

4. KUTF argues that it is licensed to a city located in the Salt Lake City DMA, as are the communities served by Comcast. It is thus entitled to mandatory carriage if it meets the definition of a "qualified local commercial television station" under the must carry rules.<sup>10</sup> KUTF maintains that it meets this definition because carriage of its signal will not cause increased copyright liability for Comcast and it will ensure that it delivers a signal of good quality to Comcast's principal headends.<sup>11</sup> KUTF therefore requests that the Commission order Comcast to immediately commence carriage of its signal on its cable systems.

5. In opposition, Comcast argues that KUTF's complaint should be denied because the station fails to deliver a signal of sufficient strength to the principal headends serving the communities.<sup>12</sup> Comcast maintains that the delivery of an adequate signal to a system's headend is a necessary precondition to invoking must carry rights.<sup>13</sup> Comcast states that there is no claim in this case that KUTF delivers an adequate signal. Indeed, it points out that signal strength tests it conducted of KUTF's signal show that the station fails to meet the signal strength criteria required by the Commission's rules.<sup>14</sup> Comcast asserts, therefore, that it is under no legal obligation to carry KUTF on its systems serving the subject communities.<sup>15</sup>

6. In reply, KUTF argues that, regardless of whether or not it currently provides a good quality signal to Comcast's headends, it has pledged to deliver a signal of good quality, at its own expense. Because it has done so, and because its carriage will not cause increased copyright liability,

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<sup>4</sup>Complaint at 1, n.1.

<sup>5</sup>*Id.* at 2.

<sup>6</sup>*Id.* at Exhibit II.

<sup>7</sup>*Id.* at Exhibit III. KUTF points out that Comcast failed to include its signal test data at the time of this denial as required by Section 76.61(a)(2) of the Commission's rules. *See* 47 C.F.R. § 76.61(a)(2).

<sup>8</sup>*Id.* at Exhibit IV.

<sup>9</sup>*Id.* at 2-3; *see also* 47 C.F.R. § 76.61(a)(3).

<sup>10</sup>*Id.* at 3, citing 47 C.F.R. § 76.55(2)-(3).

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

<sup>12</sup>Opposition at 1.

<sup>13</sup>*Id.* at 2, citing 47 C.F.R. § 76.55(c)(3).

<sup>14</sup>*Id.* at Exhibit 2.

<sup>15</sup>We note that Comcast raised some issues in its complaint, to which KUTF responded, that are appropriate only in the context of a market modification proceeding. As a result, they are not addressed here.

KUTF states that it is entitled to mandatory carriage on Comcast's systems.

7. We agree with KUTF and will grant its complaint. We find that the representations made by KUTF demonstrate that it is a local commercial television station qualified for carriage on Comcast's cable systems. Under 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 as a cable operator is not entitled to carriage.<sup>16</sup> Although the signal strength tests submitted by Comcast do indicate that KUTF does not currently deliver a good quality signal to Comcast's principal headends, KUTF has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.<sup>17</sup> KUTF has made this commitment and by doing so is eligible for mandatory carriage by Comcast on the subject cable systems when it provides a signal which meets the Commission's signal strength criteria.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Price Broadcasting, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534. Comcast Cable Communications, Inc. **IS ORDERED** to commence carriage of KUTF on its cable systems serving the cable communities listed in Appendix I sixty (60) days from the date on which KUTF delivers a good quality signal to the cable systems' principal headends.

9. **IT IS FURTHER ORDERED** that KUTF shall notify Comcast of its channel position elections thirty (30) days from the date it delivers a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.<sup>18</sup>

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division  
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<sup>16</sup>See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>17</sup>47 C.F.R. § 76.5(c)(3).

<sup>18</sup>47 C.F.R. §§ 76.57 and 76.64(f).

<sup>19</sup>47 C.F.R. § 0.283.

## Appendix I

Salt Lake City Headend

Alpine, UT  
American Fork, UT  
Bluffdale, UT  
Brigham City, UT  
Bountiful, UT  
Centerville, UT  
Clairfield, UT  
Clinton, Ut  
Layton, UT  
Magna, UT  
North Salt Lake City, UT  
Orem, UT  
Plain City, UT  
Provo, UT  
Riverside, UT  
Roy, UT  
Summerset Condominiums, UT  
South Salt Lake City, UT  
Spanish Fork City, UT  
Springville, UT  
Springlake, UT  
Salem, UT  
North Salt Lake City, UT  
Bennion, UT  
Draper, UT  
East Layton, UT  
Elk Ridge, UT  
Farmington, UT  
Farrwest, UT  
Kaysville, UT  
Lehi, UT  
Mapleton, UT  
Murray, UT  
Ogden, UT  
Park City, UT  
Pleasant Grove, UT  
Riverton, UT  
Salt Lake City, UT  
South Jordan, UT  
South Weber, UT  
Sunset, UT  
Uintah, UT  
West Jordan, UT  
West Valley City, UT  
Highland, UT

Taylorsville, UT  
Woods Cross, UT  
Fruit Heights, UT  
Harrisville, UT  
Herriman, UT  
Hill AFB, UT  
Hooper, UT  
Kearns, UT  
Lindon, UT  
Midway, UT  
North Ogden, UT  
Ogden Canyon, UT  
Payson, UT  
Pleasantview, UT  
Riverdale, UT  
Ronclair, UT  
Sandy, UT  
South Ogden, UT  
Spanish Fork, UT  
Syracuse, UT  
Washington Terrace, UT  
West Ogden, UT  
Willard, UT  
West Haven, UT  
Jeremy Ranch, UT

Logan Headend  
Richmond, UT  
Nibley, UT  
Wellsville, UT  
Hyde Park, UT  
Providence, UT  
North Logan, UT  
River Heights, UT  
Hyrum, UT  
Paradise, UT  
Newton, UT  
Smithfield, UT  
Mendon, UT  
Lewiston, UT  
Cache County, UT  
Franklin, UT  
Logan, UT  
Cornish, UT  
Clarkston, UT  
Fairview, UT

Morgan Headend  
Morgan City, UT  
Morgan County, UT

Fish Haven Headend  
St. Charles, ID  
Fish Haven, UT  
Gardon, UT

Tremonton Headend  
Tremonton, UT  
Deweyville, UT  
Fielding, UT  
Honeyville, UT  
Corinne, UT  
Plymouth, UT  
Garland, UT  
Riverside, UT  
Bear River City, UT

Nephi Headend  
Nephi, UT

Herber Headend  
Herber City, UT

Coalville Headend  
Coalville, UT

Preston Headend  
Preston, ID

Stansbury Headend  
Stansbury, UT  
Tooele, UT  
Tooele Army Depot, UT  
Graensville, UT

\*The communities of Al's Apple Acre MHP, Elite and Hoytsville, UT were also listed by KUTF, but Comcast states that it was unable to match these communities to specific headends.