

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

In the Matter of:
KM Television of Flagstaff, L.L.C.
v.
Mark Twain Cablevision, L.P.
Request for Mandatory Carriage of
Television Station KCFG(TV),
Flagstaff, Arizona
CSR-5973-M

MEMORANDUM OPINION AND ORDER

Adopted: January 7, 2003

Released: January 9, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KM Television of Flagstaff, L.L.C. ("KM"), licensee of commercial full power television broadcast station KCFG(TV), analog Channel 9, Flagstaff, Arizona ("KCFG" or the "Station"), filed the above-captioned must carry complaint against Mark Twain Cablevision, L.P. ("Mark Twain"), a cable television system operator, for failing to carry KCFG on its cable system serving the Phoenix, Arizona Designated Market Area (the "cable community"). No opposition to the petition was filed. 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. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 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.

others, based on measured viewing patterns.

3. In support of its complaint, KM states that KCFG is licensed to Flagstaff, Arizona, which is in the Phoenix, Arizona DMA. It states further that Mark Twain operates a cable television system located in or serving the communities of Gila and or Coconino Counties, Arizona, which are also in the Phoenix, Arizona DMA. KM contends that because KCFG is located within the same DMA as the Mark Twain cable system, it is entitled to mandatory carriage on that system. KM asserts that it sent a letter dated June 24, 2002, certified mail, return receipt requested, formally requesting that Mark Twain commence carriage of the Station's signal on its cable system.³ The letter also indicated that in the event KCFG did not provide a good quality off-the-air signal to Mark Twain's headend, KM would be responsible for the costs of delivering a "good quality signal" to Mark Twain's headend.⁴ Despite KM's request, Mark Twain did not respond within 30 days of KM's demand letter as required by the Commission's rules.⁵ KM requests that the Commission order Mark Twain to commence carriage of its signal on the cable system serving the cable community.

4. We will grant KM's uncontested petition.⁶ KCFG and Mark Twain are located within the same DMA. As such, and absent an opposition demonstrating why carriage is not appropriate, KCFG is entitled to carriage on Mark Twain's system.

III. ORDERING CLAUSES

5. 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 KM Television of Flagstaff, L.L.C., licensee of commercial television broadcast station KCFG, Phoenix, Arizona against Mark Twain Cablevision, L.P. **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that Mark Twain Cablevision **SHALL COMMENCE CARRIAGE** of the KCFG signal on its Gila and Coconino County, Arizona cable system within sixty (60) days from the date of the release of this Order.

7. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

³ Complaint at 3 and Exhibit C.

⁴ *Id.*

⁵ See 47 C.F.R. § 76.61(a)(2).

⁶ Since no opposition was filed, there has been no allegation that KM failed to provide Mark Twain with a good quality signal. In any event, we note that KM committed to do whatever is needed to provide Mark Twain with a good quality signal. Complaint at 3.

⁷ 47 C.F. R. § 0.283.