

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

In the Matter of:
KM Television of Flagstaff, L.L.C.
v.
Invideo Co., Inc.
Request for Mandatory Carriage of
Television Station KCFG(TV),
Flagstaff, Arizona
CSR-5977-M

MEMORANDUM OPINION AND ORDER

Adopted: January 9, 2003

Released: January 13, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KM Television of Flagstaff, L.L.C. ("KM Television"), licensee of television broadcast station KCFG(TV) (Ch. 9), Flagstaff, Arizona ("KCFG") filed the above-captioned must carry complaint against Invideo Co., Inc. ("Invideo") for failing to carry KCFG on its cable systems serving several communities located in Coconino, Navajo and/or Yavapai Counties, Arizona ("cable communities").

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended ("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, such as KCFG, are entitled to assert mandatory carriage rights on cable systems located within the station's market.

1 According to KCFG, the following communities are included in this complaint: Desert View (AZ0161), Grand Canyon (AZ0162), Keams Canyon (AZ0058), Leupp (AZ0366), North Rim (AZ0163), Sage Mobile Home Park (AZ0354), Spring Valley (AZ0353), Tuba City (AZ0057) and Tusayan (AZ0211). Complaint at 1-2.

2 8 FCC Rcd 2965, 2976-2977 (1993).

3 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 base on viewing patterns.

(continued...)

geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ For VHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's principal headend is -49 dBm.⁶ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁷

III. DISCUSSION

4. In support of its complaint, KCFG states that it is a full-power commercial television station licensed to Flagstaff, Arizona, which is in the Phoenix, Arizona DMA.⁸ It states further that Invideo operates several cable television systems that are also located in the Phoenix DMA.⁹ KCFG asserts that in January 2001, it formally notified Invideo of its mandatory carriage election on the systems at issue. KCFG asserts further that on June 24, 2002, it demanded carriage of its signal on the cable systems in question.¹⁰ KCFG claims that Invideo did not respond to its June 24, 2002 demand for mandatory carriage in the cable communities within 30 days of receipt of such request as required by the Commission's rules.¹¹ KCFG requests that the Commission order Invideo to commence carriage of its signal on channel 9 on the cable systems in question.¹²

5. Section 76.55 of the Commission's rules provides that commercial television broadcast stations, such as KCFG, are entitled to carriage on cable systems located in the same DMA.¹³ As noted above, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.¹⁴ We find that Invideo has failed to meet this

(...continued from previous page)

534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁷ *Must Carry Order*, 8 FCC Rcd at 2991.

⁸ Complaint at 2.

⁹ *Id.*

¹⁰ *Id.* at 3 and Exhibit B.

¹¹ *Id.* at 4 and Exhibit B. See 47 C.F.R. § 76.61(a)(2).

¹² *Id.* at 5.

¹³ 47 C.F.R. § 76.55.

¹⁴ See *Must Carry Order*, 8 FCC Rcd at 2990.

burden. Invideo did not respond within 30 days to KCFG's letter requesting carriage as required by the Commission's rules nor did it file an opposition to KCFG's must carry complaint.¹⁵ Thus, we find that KCFG is entitled to mandatory carriage on the Invideo cable systems at issue. Based on the foregoing, we grant KCFG's complaint.

6. Finally, concerning KCFG's channel positioning request, we find that it has properly requested carriage on channel 9 on Invideo's cable systems, the same channel number on which the Station is broadcast over-the-air. Pursuant to the Commission's rules, cable operators must comply with the channel positioning requirements absent a compelling technical reason.¹⁶

IV. ORDERING CLAUSES

7. 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 television broadcast station KCFG(TV), Flagstaff, Arizona, against Invideo Co. Inc. **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that Invideo **SHALL COMMENCE CARRIAGE** of KCFG's signal on channel 9 of its cable systems serving Desert View (AZ0161), Grand Canyon (AZ0162), Keams Canyon (AZ0058), Leupp (AZ0366), North Rim (AZ0163), Sage Mobile Home Park (AZ0354), Spring Valley (AZ0353), Tuba City (AZ0057) and Tusayan (AZ0211), Arizona within sixty (60) days from the date of the release of this *Order*.¹⁷

9. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division
Media Bureau

¹⁵ 47 C.F.R. § 76.55(c)(3).

¹⁶ 47 C.F.R. § 76.57; *See Must Carry Order*, 8 FCC Red at 2988.

¹⁷ While it is unclear from the record whether KCFG elected must carry status or defaulted to must carry status for the current election period which commenced on January 1, 2003, our action herein is conditioned on KCFG having must carry status during the current cycle.

¹⁸ 47 C.F.R. § 0.283.