

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

In the matter of:)
)
KM Television of Flagstaff, L.L.C.)
v.) CSR-5974-M
Cable One, Inc.)
)
Request for Carriage)

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., licensee of television broadcast station KCFG (Ch. 9), Flagstaff, Arizona (“KCFG”) filed the above-captioned complaint against Cable One, Inc. (“Cable One”) for its failure to carry KCFG on its cable systems serving Bushman Acres, Chino Valley, Clarkdale, Cornville, Cottonwood, Dewey, Gila, Holbrook, Humboldt, Joseph City, Lakeside, Mayer, Page Springs, Pinetop, Pineview, Prescott, Prescott Valley, Show Low, Snowflake, Taylor Town, Winslow and unincorporated portions of Coconino and Yavapai Counties, Arizona.¹ An opposition to this complaint was filed on behalf of Cable One to which KCFG replied. For the reasons discussed, 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 and 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.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³

¹Cable One points out in its opposition the specific physical cable systems to which these communities refer appear to be the following: Prescott, Cottonwood, Holbrook, Joseph City, Show Low and Winslow.

²8 FCC Rcd 2965, 2976-2977 (1993).

³Section 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)(2) of the Commission’s rules requires that a commercial television station’s market be defined by Nielsen Media Research’s DMAs. See *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

3. In support of its petition, KCFG states that it sent its must carry election letter to Cable One on January 16, 2001 and formally requested carriage on Cable One's cable systems by letter dated June 24, 2002.⁴ Despite the fact that Cable One was required by Section 76.61(a)(2) of the Commission's rules to respond to this request within thirty days, KCFG states that it received no response.⁵ KCFG filed the instant complaint within sixty days of Cable One's failure to respond, as required by Section 76.61(a)(5) of the Commission's rules.⁶ KCFG argues that it meets the definition of a "local commercial television station" because it is located within the same television market as Cable One's cable systems, will deliver an adequate signal to the cable systems' principal headends, and its carriage would not increase Cable One's copyright liability.⁷ KCFG states that if it should be found that it does not deliver an adequate off-air signal to Cable One's headends, it will purchase and install any additional equipment necessary to ensure the delivery of a good quality signal by whatever means necessary.⁸

4. In opposition, Cable One argues that KCFG's complaint is untimely because the August 26, 2002 filing of its complaint was more than 60 days after its January 16, 2001 request for carriage and channel position.⁹ Cable One states that its general manager subsequently notified KCFG on May 15, 2001 that signal strength tests found KCFG's signal undetectable and denied the station's request for carriage.¹⁰ Cable One argues that the Commission has previously ruled that such responses are plainly denial of carriage within the meaning of Section 76.61(a)(2) of the Commission's rules and trigger the station's requirement pursuant to Section 76.61(b)(5) to file its must carry complaint within 60 days.¹¹ KCFG argues in reply that Cable One's contention that the January 16, 2001 letter was a request for carriage because it contained an initial request for channel carriage position is in error. KCFG states that its January 16th letter simply pointed out KCFG's channel positioning rights under Section 76.57 of the Commission's rules and also expressly noted that it was an election of must carry only and not a demand for carriage.¹²

5. In adopting the must carry regulations, the Commission's *Must Carry Order* set forth a two-step notification process. Sections 76.64(f)(1) and (4) of the Commission's rules requires all commercial television stations to choose between retransmission consent and must carry status either at specific election periods or within specified times before or after going on-air.¹³ At the same time as it makes its election choice, Section 76.57(e) of the Commission's rules requires that the station also notify the cable system of its choice of channel position.¹⁴ Section 76.61(a)(1) of the Commission's rules

⁴Complaint at Exhibits B and C.

⁵*Id.* at 4; *see* 47 C.F.R. § 76.61(a)(2).

⁶47 C.F.R. § 76.61(a)(5).

⁷Complaint at 5; *see* 47 C.F.R. §§ 76.55(c) and 76.60.

⁸Complaint at 5 and Exhibit C. KCFG states that its current signal coverage is limited off-the-air to 1 kilowatt effective radiated power ("ERP") at its Elden Mountain transmitter site due to a power restriction. KCFG states that while it has a pending application to upgrade its facilities and relocate its tower to Mormon Mountain, action on that application has been delayed due to the need for more information. Due to this delay, KCFG decided to demand carriage now and deliver its signal by alternate means. *See* Complaint at 5 n. 2.

⁹Opposition at 2, citing Complaint at Exhibit B.

¹⁰*Id.* at Exhibit A.

¹¹*Id.* at 3, citing *Must Carry Order*, 8 FCC Rcd 2965, 2995 (1993). *See also* 47 C.F.R. §§ 76.61(a)(2) and 76.61(b)(5).

¹²Reply at 6-7.

¹³47 C.F.R. §§76.64(f)(1) and (4).

¹⁴47 C.F.R. §76.57(e).

mandates that local commercial television stations notify cable operators in writing when such cable operators fail to meet their carriage or channel positioning obligations.¹⁵ In the *Must Carry Order* it was stated that “[T]his initial notification will act as a condition precedent to a commercial or LPTV station filing a complaint with the Commission, as well as serve as a primary part of the pleadings in the event a complaint is filed.”¹⁶ Cable operators are required to respond to such written notice within thirty days, pursuant to Section 76.61(a)(2) of the rules, and any commercial stations denied carriage may then file a must carry complaint with the Commission within sixty days thereafter pursuant to Section 76.61(a)(3) of the rules.¹⁷ In the instant case, despite Cable One’s arguments to the contrary, it is evident that KCFG’s January 16, 2001 letter was an election notification as required by our rules and not a must carry request under Section 76.61(a)(1) which triggers the must carry complaint filing deadline. The letter not only specifically states that it is pursuant to the provisions established under Section 76.64(f) of the rules, but also expressly states that it is not a notification under Section 76.61(a)(1) of the rules. As a result, we find that KCFG’s June 24, 2002 letter demanding carriage to be a valid carriage request and the station’s subsequent must carry complaint to be timely filed.

6. Cable One points out that one key requirement for a broadcaster to be entitled to must carry status is its ability to “deliver to the principal headend of a cable system either a signal level of -45 dBm for UHF signal or -49 dBm for VHF signal at the input terminals of the signal processing equipment.”¹⁸ Cable One argues that because KCFG admits that its ERP is currently limited and that it cannot deliver a good quality signal to the subject cable systems its complaint should be denied.¹⁹ Cable One states that recent signal strength tests it conducted of KCFG’s signal at its system headends confirms KCFG’s poor signal quality.²⁰ KCFG argues that it is well established that local commercial television stations are entitled to carriage on all cable systems within their DMA if, as KCFG has done, it commits to delivering a “good quality signal” by alternate means, at the television station’s expense.²¹ KCFG states that despite the fact that it repeatedly made this commitment, both in its letters to Cable One and the instant complaint, Cable One has not acknowledged such commitment.²² KCFG argues, therefore, that its complaint should be granted and the Commission should order Cable One to begin carriage of its signal within 60 days after KCFG delivers a good quality signal, either off-air or by alternate means.

7. A review of the signal strength tests of KCFG’s signal provided by Cable One indicates that all of the tests were conducted employing good engineering practices and, except for one, demonstrate that KCFG does not presently provide a good quality signal at 5 of the 6 Cable One principal headends. We note, however, that KCFG 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 the 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.²³ KCFG has made this commitment and by doing so is eligible for

¹⁵47 C.F.R. §76.61(a)(1).

¹⁶*Must Carry Order*, 8 FCC Rcd at 2994.

¹⁷47 C.F.R. §§76.61(a)(2) and (3).

¹⁸*Id.* at 4, citing 47 U.S.C. § 534(h)(1)(B)(iii).

¹⁹*Id.* at 5. Indeed, Cable One points out that in its complaint that KCFG merely asks the Commission to require Cable One to carry its signal after it delivers a good quality signal to the principal headends. *Id.*

²⁰*Id.* at Exhibit B.

²¹Reply at 3, citing *Paxson Scranton License, Inc.*, 17 FCC Rcd 12913, 12914 (MB 2002). *See also* 47 C.F.R. § 76.55(c)(3).

²²Reply at 3.

²³47 C.F.R. §76.55(c)(3).

mandatory carriage by Cable One on its systems serving Prescott, Cottonwood, Holbrook, Joseph City and Winslow when it provides a signal which meets the Commission's signal strength criteria. For the system serving Show Low, however, the signal strength test information provided indicates that Cable One's antenna was directed at Phoenix, Arizona, instead of at Flagstaff, KCFG's city of license. Consequently, the results provided by Cable One fail to prove that KCFG does not provide a good quality signal to the Show Low system. KCFG's carriage on that system, therefore, will be granted without any precondition.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the complaint filed by KM Television of Flagstaff, L.L.C. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended.²⁴ Cable One, Inc. **IS ORDERED** to commence carriage of KCFG on its Prescott, Cottonwood, Holbrook, Joseph City and Winslow, Arizona cable systems within sixty (60) days from the date KCFG delivers a good quality signal to the systems' principal headends.²⁵

9. **IT IS FURTHER ORDERED** that Cable One **IS ORDERED** to commence carriage of KCFG on its Show Low cable system within sixty (60) days of the release date of this Order.

10. **IT IS FURTHER ORDERED** that KCFG shall notify Cable One in writing of its channel position election within thirty (30) days of the release date of this order or the date on which it provides a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.²⁶

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁷

FEDERAL COMMUNICATION COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

²⁴47 U.S.C. § 534.

²⁵While 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 election cycle.

²⁶47 C.F.R. §§ 76.57 and 76.64(f).

²⁷47 C.F.R. § 0.283.