

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

In the Matter of:
KM Television of El Dorado, L.L.C.
v.
Friendship Cable of Arkansas, Inc.
Classic Cable of Louisiana, L.L.C.
Request for Mandatory Carriage of
Television Station KEJB(TV)
El Dorado, Arkansas
CSR-6268-M
CSR-6072-M

MEMORANDUM OPINION AND ORDER

Adopted: May 7, 2004

Released: May 11, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KM Television of El Dorado, L.L.C. ("KM"), licensee of television broadcast station KEJB(TV) (Ch. 43), El Dorado, Arkansas ("KEJB") filed the above-captioned complaints for mandatory carriage against Friendship Cable of Arkansas, Inc. and Classic Cable of Louisiana, L.L.C. ("Classic") for failing to carry KEJB on Classic's cable systems serving various communities located in the Monroe, Louisiana - El Dorado, Arkansas market (the "Classic Communities"). Classic filed oppositions in the above-captioned matters to which KM replied. For the sake of administrative convenience, we consolidate the above-captioned petitions, as the parties and issues are common to both matters.

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 KEJB, are entitled to assert mandatory carriage

1 Friendship Cable of Arkansas, Inc. and Classic Cable of Louisiana, L.L.C. are commonly owned subsidiaries of Classic Cable, Inc. The cable communities subject to the petitions are as follows: CSR-6268-M - Bernice (LA0287), Calion (AR0295, AR0296), Dubach (LA0288), Hamburg (AR0082), Junction City (AR0294), Junction City (LA0293), Lake Bruin (LA0256), Lincoln (LA0289), Norphlet (AR0243), Smackover (AR0242), Spokane (LA0327), Tensas (LA0306), and Union (LA0290); CSR-6272-M - Fountain Hill (AR0563).

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> A DMA is a 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.<sup>4</sup> 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.<sup>5</sup> For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's principal headend is -45 dBm.<sup>6</sup> 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. 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.<sup>7</sup>

### III. DISCUSSION

4. In support of its complaint, KM states that KEJB is a full-power commercial television station licensed to El Dorado, Arkansas, located in the Monroe, Louisiana – El Dorado, Arkansas DMA.<sup>8</sup> Petitioner states further that Classic operates cable television systems that are also located in the Monroe, Louisiana – El Dorado, Arkansas DMA. KM asserts that on October 2, 2003, it formally notified Classic of its mandatory carriage elections and requested carriage on the basic service tier on the systems serving the Classic Communities.<sup>9</sup> KM contends that Classic did not respond to its demands for mandatory carriage within 30 days of receipt of such requests as required by the Commission's rules,<sup>10</sup> and requests that the Commission order Classic to commence carriage of the station's signal on a mutually agreeable channel on the basic tier. KM states that in the event that the station does not deliver a good quality over-the-air signal to the systems' principal headends, KEJB will provide a good quality signal by alternate means, if necessary, at the station's expense.<sup>11</sup>

5. Classic argues that based on signal strength measurements conducted between January 28

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

<sup>4</sup> *See Must Carry Order*, 8 FCC Rcd at 2990.

<sup>5</sup> 47 C.F.R. § 76.55(c)(3).

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

<sup>7</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>8</sup> Petitions at 2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*; *see* 47 C.F.R. § 76.61(a)(2).

<sup>11</sup> Petitions at 4; *see* 47 § 76.55(c)(3).

and February 16, 2004, the station fails to deliver the required signal strength of -45dBm at the systems' principal headends, except at the Bernice, Louisiana headend,<sup>12</sup> and that the systems are therefore not obligated to carry the station's signal.<sup>13</sup> In support, Classic provides engineering data which indicates that the station did not provide the required signal strength at the systems' principal headends, other than the Bernice system, on the date of testing.<sup>14</sup>

6. In reply, KEJB argues that, with the exception of the Bernice system, Classic conducted its signal strength measurements during a period from January 23 through January 30, 2004, when the station was temporarily operating at half of its authorized power.<sup>15</sup> KEJB states that the station operated at reduced power from January 13 through February 2, 2004. KEJB restates its commitment to provide a good quality signal to the system's headends at the station's expense.<sup>16</sup>

7. Section 76.55 of the Commission's rules provides that commercial television broadcast stations, such as KEJB, are entitled to carriage on cable systems located in the same DMA.<sup>17</sup> 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.<sup>18</sup> We find that Classic has failed to meet this burden.

8. A review of Classic's signal strength tests indicate that all of the tests were conducted in violation of the Commission's rules. Specifically, Classic did not include "sketches such as block diagrams and a description of the methodology used for processing the signal at issue."<sup>19</sup> In addition, Classic did not follow sound engineering measurement practices. Specifically, the tests do not indicate antenna orientation, and a majority of the tests were taken over a period of several days to one week.<sup>20</sup> Furthermore, we note that with the exception of the Bernice system, Classic conducted signal strength tests while KEJB was operating at reduced power. In view of the above, Classic has failed to carry its burden of demonstrating that KEJB does not deliver a good quality signal to Classic's principal headends. Consequently, we will order Classic to commence carriage of KEJB. Further, we note that KEJB 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, the equipment necessary for delivery of a good quality signal to a cable system's principal headend.<sup>21</sup>

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<sup>12</sup> Classic states that it will initiate carriage of KEJB on the Bernice system within 60 days from the filing date of its opposition, February 17, 2004. Opposition at 1.

<sup>13</sup> *Id.* at 2-3.

<sup>14</sup> *Id.*, Exhibit B.

<sup>15</sup> Reply at 2-4. KEJB states that Classic was informed of the station's operation at reduced power and should not have conducted signal strength tests at that time.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> 47 C.F.R. § 76.55.

<sup>18</sup> *See Must Carry Order*, 8 FCC Rcd at 2990.

<sup>19</sup> *See* 47 C.F.R. § 76.61.

<sup>20</sup> *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, para. 60-61.

<sup>21</sup> 47 C.F.R. §76.55(c)(3).

9. Finally, concerning KM's channel positioning request, we find that petitioner has properly requested carriage on the basic service tier. Pursuant to the Commission's rules, cable operators must comply with channel positioning requirements absent a compelling technical reason.<sup>22</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the mandatory carriage carry complaints filed by KM Television of El Dorado, L.L.C., licensee of television broadcast station KEJB(TV), El Dorado, Arkansas, against Classic Cable of Louisiana, L.L.C. and Friendship Cable of Arkansas, Inc. **ARE GRANTED**.

11. **IT IS FURTHER ORDERED** that Classic **SHALL COMMENCE CARRIAGE** of KEJB's signal on the basic service tier of its cable systems serving the Classic Communities within sixty (60) days from the date of the release of this order.

12. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>23</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>22</sup> 47 C.F.R. § 76.57; *see Must Carry Order*, 8 FCC Rcd at 2988.

<sup>23</sup> 47 C.F.R. § 0.283.