

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

In the Matter of:
San Bernardino Community College District, San Bernardino, California
v.
Adelphia California Cablevision LLC
Request for Mandatory Carriage of
Television Station KVCR-TV,
San Bernardino, California
CSR-6912-M

MEMORANDUM OPINION AND ORDER

Adopted: November 14, 2005

Released: November 15, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. San Bernardino Community College District, licensee of noncommercial educational ("NCE") television station KVCR-TV, San Bernardino, California ("KVCR" or the "Station") filed the above-captioned must carry complaint against Adelphia California Cablevision LLC ("Adelphia") for failing to carry KVCR on its cable television systems serving El Monte, South Gate and Walnut Park, California, as well as surrounding environs (the "cable communities"). Adelphia filed an opposition to which KVCR replied. Adelphia then submitted a supplement. For the reasons discussed below, we grant the complaint, in part, and deny, in part.

II. BACKGROUND

2. Under Section 615 of the Communications Act of 1934, as amended, 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"), noncommercial educational television broadcast stations, such as KVCR, are entitled to assert mandatory carriage rights on cable systems when either the predicted Grade B contour of the NCE station encompasses the principal headend of the cable system or when the city of license of the NCE station is located within 50 miles of the principal headend.

147 U.S.C. §535.

28 FCC Rcd 2965, 2966-2971 (1993).

347 C.F.R. §76.55(b).

III. DISCUSSION

3. KVCR in its complaint explains that it had been carried by Adelphia in the cable communities on channel 24, its over-the-air channel, for about 14 years until it had to reduce power while it installed a new transmitter. At this time, according to KVCR, it was unable to provide Adelphia's headend with a good quality signal and Adelphia stopped carrying the station. KVCR further explains that Adelphia claims it consolidated four headends in La Mirada, California, which it claims is its principal headend. According to KVCR, its community of license, San Bernardino, is 44 miles from the principal headend in La Mirada.⁴

4. When KVCR returned to full power, KVCR stated it notified Adelphia that it wished to resume its carriage on the cable system in the cable communities. KVCR explains that it discussed carriage with Adelphia for about a year, and offered to pay any expenses associated with delivering a good quality signal. At first, the station alleges that Adelphia indicated it wanted to arrange delivery of KVCR's signal and suggested KVCR provide its signal to one of the old headends at Glendora, and then use fiber optic cable to deliver it to the La Mirada principal headend.⁵ However, five months later, Adelphia notified KVCR that it was not entitled to carriage because it did not deliver a good quality signal to its La Mirada principal headend. KVCR believes this notification was prompted by Adelphia's decision to carry another television station on channel 24 where KVCR previously had been carried.⁶ KVCR explains that discussions and negotiations continued for a number of months without resolution.⁷

5. KVCR asserts that its must carry complaint was timely filed, and that there is no legal impediment to the resumption of the station's carriage.⁸ It further asserts that two signal strength tests presented by Adelphia to support its claim that KVCR did not provide a good quality signal to its principal headend at La Mirada were seriously flawed.⁹ Finally, KVCR states that the La Mirada headend may be a sham because no over-the-air signals are received there. KVCR argues that Adelphia designated this headend as its principal headend to avoid its must carry obligation with respect to KVCR. Thus, according to KVCR, it should not be required to pay costs associated with delivering its signal to La Mirada when this headend is not used to receive other television signals, and is not really the principal headend. KVCR states that it would have no problem delivering a good quality signal to the old headends.¹⁰

6. KVCR requests that the Commission order Adelphia to cooperate with KVCR so it can deliver a good quality signal, and to resume carriage of the station within 45 days. KVCR also requests that the Commission sanction Adelphia for its "year long campaign of bad-faith dealings and delay tactics."¹¹

7. Adelphia in its opposition to KVCR's complaint states that the critical issue is that the station

⁴Complaint at 2.

⁵*Id.* at 3.

⁶*Id.* at 4-5.

⁷*Id.* at 5-8.

⁸*Id.* at 8-9.

⁹*Id.* at 10-11.

¹⁰*Id.* at 11-12.

¹¹*Id.* at 12-13.

fails to deliver a good quality signal to its principal headend in La Mirada, and, therefore, it has no legal obligation to carry KVCR.¹² Adelphia claims that La Mirada is its principal headend, and that it decided to consolidate headends at La Mirada for business reasons, which were unrelated to KVCR's must carry status. Further, Adelphia states it is committed to honoring KVCR's must carry rights if it provides a good quality signal to KVCR's principal headend in La Mirada.¹³ However, Adelphia explains that it conducted additional signal strength tests which reflected that KVCR does not currently provide an adequate signal.¹⁴ According to Adelphia, most of the broadcasters in the Los Angeles area that it carries are capable of delivering a good quality signal to this headend. Adelphia further states that "the overwhelming majority of all the channels offered in the cable communities (including satellite delivered programming) is received at the centrally-located La Mirada Headend. Moreover, critical signal processing functions for the cable communities (including the formation of individual channel line ups and ad insertions) are performed at La Mirada." However, Adelphia appears to acknowledge that it has other "receive site facilities."¹⁵ Adelphia also denies that it misled or delayed KVCR's must carry claim, and asserts that any delay was KVCR's fault. Adelphia explains that it never offered to receive KVCR's signal at its old headend at Glendora because that headend was shut down while KVCR was operating at reduced power.¹⁶

8. KVCR replies that the central issue in the dispute is that Adelphia has unlawfully prevented KVCR's carriage on its cable system for over a year by delaying tactics and refusal to cooperate. KVCR asserts that during this period, it "would have gladly provided and installed whatever equipment is necessary to provide Adelphia with a good quality KVCR signal at whatever headend it chose – *including the La Mirada headend.*"¹⁷ KVCR further asserts that if Adelphia "states *in writing* that Adelphia will cooperate in good faith with KVCR to arrange carriage, the Community College will withdraw its Must Carry Complaint."¹⁸ KVCR also continues its claim that the La Mirada headend is a sham, and although Adelphia claims that the majority of its channels are received at La Mirada, it failed to indicate whether any of these are local over-the-air television channels.¹⁹

9. Adelphia submitted a supplemental filing in response to KVCR's reply. Adelphia explains that it answered KVCR's above request for cooperation by sending KVCR a letter providing "precisely the assurance KVCR sought from Adelphia." The letter provided by Adelphia states that it was "accepting your offer" and that "[o]ur carriage commitment is contingent on KVCR delivering a good quality signal to the La Mirada headend," and that Adelphia agrees to have KVCR's engineer present during signal strength tests. Adelphia claims that KVCR did not respond to its letter.²⁰

¹²Adelphia cites 47 U.S.C. §535(g)(4) (station required to deliver good quality signal as defined by Commission), and 47 C.F.R. §76.55(c)(3) (cable system not required to carry UHF station unless it provides signal level of -45dBm unless station pays costs of delivering good signal).

¹³Opposition at 1-3.

¹⁴*Id.* at 4, and Exhibit 1.

¹⁵*Id.* at 4-5.

¹⁶*Id.* at 6-9.

¹⁷Reply at 1-2 (emphasis original).

¹⁸*Id.* at 3-4 (emphasis original).

¹⁹*Id.* at 6-8.

²⁰Supplemental Filing at 1 and Exhibit A.

10. Our review of the most recent signal strength tests submitted by Adelphia in its opposition indicates that the tests comply with good engineering practices, and that KVCR does not provide a good quality signal to the La Mirada headend. Regarding the headend issue, a cable system may designate its principal headend, and if a cable system has more than one headend, a cable system has some flexibility in its choice of a principal headend provided its choice is reasonable and not made to circumvent must carry obligations. The Commission has recognized designated principal headends even when another receive site controlled by the cable operator may be more convenient to a broadcaster, and when a principal headend does not actually receive over-the-air television broadcast signals at the headend.²¹

11. The Commission has established factors that it considers in judging the reasonableness of a designated principal headend. These factors include whether the principal headend serves the majority of subscribers, accommodates the majority of the signal processing equipment, and is near the center of the cable system. Further, a cable system may change its principal headend when, for example, the system adds communities. If a cable system changes its principal headend, it should notify stations carried on the system based on must carry status, and include the new designation in its public file.²² Adelphia in its opposition asserts that it consolidated headends at La Mirada for business purposes, including technological and economic efficiencies; that the overwhelming majority of its offered channels are received there, that the headend is centrally located, and that critical signal processing functions are performed there. KVCR has failed to introduce any evidence which persuades us that Adelphia consolidated its headends to deprive KVCR of carriage.

12. KVCR has stated that it is interested in correcting any deficiency in the reception of its signal, and to deliver a good signal to a headend specified by Adelphia, including the La Mirada headend.²³ Adelphia accepted this offer contingent on KVCR delivering a good quality signal to its La Mirada headend, and indicated it also agreed to joint signal quality tests with KVCR. It is established Commission policy that a station seeking carriage on a cable system is required to pay for or otherwise provide any antenna, equipment and other improvements directly related to delivering a good quality signal to a cable system's principal headend.²⁴ Thus, KVCR is entitled to mandatory carriage on Adelphia's cable systems serving El Monte, South Gate, Walnut Park, and surrounding areas in California when KVCR provides the cable systems with a signal of good quality at the La Mirada headend. We expect the parties to cooperate in this matter, which they have indicated a willingness to do in their submissions to the Commission. Lastly, with respect to KVCR's allegations of bad faith by Adelphia, we note that KVCR was free at any time to file a complaint during its negotiations.

²¹*E.g., LeSEA Broadcasting Corp. v. Cox Communications Kansas, LLC*, 19 FCC Rcd 6218 (Principal headend had no antennas, but received broadcast signals from other sites by fiber networks, processed the signals, and then transported the programming over fiber networks to hubs which served cable communities.). *See also Minority Television Project, Inc. v. AT&T Broadband, LLC*, 17 FCC Rcd 22810 (2002); *Washburn University Topeka v. Kansas City Cable Partners*, 14 FCC Rcd 9323 (1999).

²²*Must Carry Order*, 8 FCC Rcd at 2968; *see also* 47 C.F.R. §76.5(pp).

²³Reply at 2-4.

²⁴*Supra* n. 21.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 615 of the Communications Act of 1934, as amended, 47 U.S.C. § 535, that the must carry complaint filed by San Bernardino Community College District, licensee of noncommercial educational television broadcast station KVCR, San Bernardino, California against Adelphia California Cablevision LLC **IS GRANTED IN PART** and **DENIED IN PART**, as discussed herein.

14. **IT IS FURTHER ORDERED**, in accordance with Section 76.61(b)(2) of the Commission's rules, 47 C.F.R. §76.61(b)(2), that Adelphia California Cablevision LLC **SHALL COMMENCE CARRIAGE** of KVCR's signal on its cable systems serving the communities of El Monte, South Gate and Walnut Park, California, as well as surrounding environs, within forty-five (45) days from the date that KVCR provides a good quality signal to Adelphia's principal headend in La Mirada, California.

15. **IT IS FURTHER ORDERED**, in accordance with Section 76.57(b) of the Commission's rules, 47 C.F.R. §76.57(b), that KVCR be carried by the Adelphia cable systems on channel 24, its over-the-air channel, or, at the election of the station, on the channel on which it was carried on July 19, 1985. The parties may also mutually agree to another channel number.

16. This action is taken under authority delegated by Section 0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

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