

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

In the Matter of:)	
)	
Ortiz Broadcasting Corp.)	
)	CSR-6996-M
v.)	
)	
Time Warner Cable)	
)	
)	
Request for Mandatory Carriage of)	
Television Station KTRG-TV,)	
Del Rio, Texas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 2006

Released: June 30, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Ben B. Floyd, Trustee in bankruptcy of Ortiz Broadcasting Corporation (“Trustee” or “Ortiz”), licensee of KTRG-TV (“KTRG”), Del Rio, Texas filed the above-captioned must carry complaint against Time Warner Cable (“Time Warner”) for failing to carry KTRG in San Antonio, Texas.¹ Time Warner filed an opposition. For the reasons discussed below, we grant the complaint, in part, and deny, in part.

II. BACKGROUND

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.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ The term DMA is a geographic market designation that defines each television market

¹ Although the Complaint is not clear on which cable systems the station is seeking carriage, Time Warner indicates that it believes that both its San Antonio system and its Southwest Division Systems are involved and it has thus responded for both. Opposition 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 based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission’s rules requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e).

exclusive of others, based on measured viewing patterns.

III. DISCUSSION

3. The Trustee in bankruptcy for Ortiz states that KRTG-TV is being sold pursuant to bankruptcy proceedings.⁴ As a result, the Trustee requested authority to temporarily discontinue station operations pending the sale and such authority was granted by the Commission until June 28, 2006.⁵ Prior to discontinuing operations, on September 22, 2005, the licensee elected must carry status on Time Warner's cable systems serving Del Rio, Texas and noted that the station is assigned to the San Antonio, Texas DMA.⁶ On December 19, 2005, Time Warner denied carriage because KRTG-TV did not provide a good quality signal for reception at the cable system's headend.⁷

4. The Trustee asserts that he is unable to address Time Warner's denial of carriage because the station has temporarily discontinued service. He states that the bankruptcy court has approved a buyer and when the sale of the station has closed, it should be back on the air. He accordingly asks that the Commission hold the complaint in abeyance until June 28, 2006 and allow the new owner of the station to supplement the record.⁸

5. Time Warner opposes the complaint, stating that two separate cable systems are involved.⁹ With respect to its San Antonio system, Time Warner points out that in 1997, the Commission excluded those cable communities from KTRG's market and thus the station has no must carry rights on Time Warner's San Antonio system.¹⁰ With respect to its Southwest Division Systems serving Del Rio and Uvalde, Time Warner asserts that the station's complaint has no basis because the station is currently off the air and thus cannot be carried by any cable system. It also states that when the station resumes operations, Time Warner will again test the signal and will "proceed in accordance with the applicable must carry regulations."¹¹

6. We find that KTRG is not entitled to carriage on Time Warner's San Antonio system because the cable communities served by that system were excluded from the station's market in 1997.¹² That determination by the Commission's Cable Services Bureau was based, among other factors, on the fact that KTRG was so distant from the San Antonio communities that its over-the-air signal could not reach them without assistance from a translator station.¹³

7. With respect to Time Warner's Southwest Division's Systems, we find that KTRG is entitled

⁴ Complaint at 1.

⁵ Letter from Associate Division Chief, Video Division, December 28, 2005.

⁶ Complaint at Exhibit 1.

⁷ Complaint at Exhibit 2. See 47 C.F.R. §76.55(c)(3).

⁸ Complaint at 2.

⁹ Opposition at 1.

¹⁰ Opposition at 2, citing *KBL Cablesystems of the Southwest, Inc.*, 12 FCC Rcd 21923 (CSB 1997), *App. For Rev. denied*, 16 FCC Rcd 16584 (2001).

¹¹ Opposition at 3.

¹² *KBL Cablesystems of the Southwest, Inc.*, 12 FCC Rcd 21923 (CSB 1997).

¹³ *Id.* at 21928.

to carriage on these systems when it is able to provide the requisite good quality signal to the cable systems' headends.¹⁴

IV. ORDERING CLAUSES

8. 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 Ben B. Floyd, Trustee in Bankruptcy for Ortiz Broadcasting Corp., licensee of commercial educational television broadcast station KTRG-TV, Del Rio, Texas, against Time Warner Cable **IS GRANTED IN PART** and **DENIED IN PART**, as discussed herein.

9. **IT IS FURTHER ORDERED**, in accordance with Section 76.61(a)(4) of the Commission's rules, 47 C.F.R. §76.61(a)(4), that Time Warner Cable **SHALL COMMENCE CARRIAGE** of KTRG's signal on its cable systems serving the communities of Del Rio and Uvalde, Texas, as well as surrounding environs, within sixty (60) days from the date that KTRG provides a good quality signal to Time Warner's headends.

10. 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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¹⁴ See 47 C.F.R. §76.55(c)(3).