

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

In the Matter of:)	
)	
Long Communications, LLC)	
)	CSR-7027-M
v.)	
)	
HPI Acquisition Co., LLC)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: September 19, 2006

Released: September 22, 2006

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Long Communications, LLC (“Long”), licensee of commercial television station WHKY(TV), Hickory, North Carolina, (“WHKY”), filed a must-carry complaint with the Commission, pursuant to Section 614(d) of the Communications Act of 1934, as amended, and Section 76.7 of the Commission’s rules, asking that the Commission require HPI Acquisitions Co., LLC (“HPI”) to carry WHKY on Channel 14 on HPI’s cable system in the Charlotte DMA serving Boone and Blowing Rock, North Carolina (the “communities”).¹ Charter Communications, LLC (“Charter”) filed an opposition on behalf of its wholly-owned subsidiary HPI, to which Long replied. For the following reasons, we dismiss WHKY’s complaint.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act, 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*”), 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

¹ 47 U.S.C. § 534(a); *see* 47 C.F.R. §§ 76.7 and 76.61.

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.

(continued...)

television market exclusive of others, based on measured viewing patterns. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴

III. DISCUSSION

3. In its complaint, Long explains that it elected must carry status for WHKY in a September 13, 2005 letter to HPI for all HPI systems serving the Charlotte DMA for the election cycle beginning January 1, 2006.⁵ Long then states that on January 1, 2006, HPI had not begun carriage of WHKY on its Boone or Blowing Rock, North Carolina systems, both of which are located within the Charlotte DMA.⁶ Long explains that it sent a letter to HPI on April 4, 2006 (the "April letter"), demanding carriage of WHKY in those communities.⁷ HPI did not respond or begin carriage within 30 days.⁸ On May 15, 2006, Long filed its complaint with the Commission to compel carriage.

4. In opposition, Charter maintains that Long's complaint should be dismissed because it is procedurally defective. Charter contends that Long's complaint was not filed within 60 days⁹ after Charter failed to respond to the carriage demand because the April letter was actually the second such demand.¹⁰ Charter explains that Long sent a materially similar letter demanding carriage on January 11, 2006 (the "January letter") to Charter, which would have made Long's complaint deadline April 11, 2006, more than one month before Long filed its complaint.¹¹ Charter argues that Long cannot unilaterally extend the deadline for filing a complaint by sending a second letter demanding carriage for the same communities.¹² The only material difference between the two letters, Charter explains, is that the January letter was addressed to Charter but the April letter was addressed to HPI, both at the same address.¹³

5. In response, Long argues that sending the letter to the wrong entity is a fatal defect rendering the January letter null and void.¹⁴ Long explains that only the April letter addressed to HPI can start the clock because, in the Commission's CUID database, HPI Acquisitions, not Charter Communications, is the listed operator for the communities in question.¹⁵ Long explains that when it did

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§ 534(h)(1)(C). Section 76.55(e)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area as determined by Nielsen Media Research. 47 C.F.R. § 76.55(e)(2).

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

⁵ Complaint at 1.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

⁹ 47 U.S.C. § 76.61(a).

¹⁰ Opposition at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 3; Exhibits 1 and 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 2-3.

not receive a response to its January letter, it believed that the demand had been sent to the wrong entity and subsequently sent the April letter.¹⁶ It also maintains that to allow letters sent to entities other than those listed on the CUID database would lead to confusion and a high investigative burden on broadcasters into the cable operator's ownership.¹⁷ As such, Long asserts that since the first letter was void, its complaint was timely filed based on the April letter.¹⁸

6. We agree with Charter that the complaint is procedurally defective because it was untimely filed. In its reply, Long states that addressing the carriage demand letter to the wrong entity is a fatal error which nullifies the January letter.¹⁹ We disagree. Under these circumstances, addressing the January letter to Charter was an effective demand for carriage. Both the January letter and the April letter demanded carriage for the same communities, referenced the same election letter and were sent to the same postal address.²⁰ If the desired action was to notify the cable operator of Long's carriage demand, Long did so with its January letter since there is no dispute that HPI is a wholly-owned subsidiary of Charter.²¹ By addressing the letter to the parent organization Charter, Long did indeed notify the owner of the cable system of its demand for carriage.²² Long further contends that allowing carriage demand letters to be filed with companies other than those listed in the CUID database would create confusion and impose an investigative burden on broadcasters.²³ We do not believe this is the case. By accepting the January letter as valid, we are not requiring broadcasters to send carriage demand letters to entities not listed in the CUID database. Rather, we are saying that addressing a carriage demand to a parent organization does not render the letter null and void on its face. Broadcasters may continue to send valid election and carriage demand letters to entities listed in the CUID database. The January letter was a valid carriage demand letter, and Charter's lack of response constitutes an effective denial of carriage.

7. The Commission's rules and precedent for setting forth must-carry complaint procedures are clear. "No must-carry complaint filed pursuant to Section 76.61 will be accepted by the Commission if filed more than sixty (60) days after...the denial by a cable television system operator of a request for carriage..."²⁴ As we have said previously, time limits for filing must-carry complaints are necessary to balance the interest of broadcasters in asserting carriage rights with the interest of cable operators in having certainty in their carriage obligations.²⁵ Since we have found that the carriage demand Long sent on January 11, 2006 was valid, Long had until April 11, 2006 to file its must-carry complaint.²⁶ Since

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ Reply at 2.

¹⁹ *Id.* at 3.

²⁰ Opposition Exhibits 1 and 2.

²¹ Opposition n. 9.

²² See *Entravision Holdings LLC v. Echostar Communications Corporation*, 18 FCC Rcd 19268 (2003).

²³ Reply at 4.

²⁴ See *Friendly Bible Church, Inc.*, 9 FCC Rcd 7907 (1994), *rev. denied*, 11 FCC Rcd 17115 ("Friendly Bible").

²⁵ See *Sage Broadcasting Corporation v. Brownwood Cable Television Services, Inc.*, 17 FCC Rcd 10567, 10568 (MB 2002); see also *Family Stations, Inc. v. Time Warner Cable and RCN New York*, 18 FCC Rcd 15242 (2003), *recon. withdrawn*; *KM Television of El Dorado, L.L.C. v. Cox Communications, Inc.*, 19 FCC Rcd 9889 (2004), *recon. denied*, 21 FCC Rcd 3906 (2006).

²⁶ 47 C.F.R. § 76.61(a)(5).

Long's complaint was not filed until May 15, 2006, more than one month later, its complaint must be dismissed as filed out of time.

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(d)(3), that the complaint (CSR-7027-M) filed by Long Communications, LLC. against HPI Acquisitions Co., LLC, seeking carriage of WHKY(TV) **IS DISMISSED**.

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

FEDERAL COMMUNICATIONS COMMISSION

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²⁷ 47 C.F.R. § 0.283.