

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

In the Matter of	)	
	)	
Smith Media License Holdings, LLC	)	
Licensee of Station KEYT-TV,	)	
Santa Barbara, California	)	CSR-8647-M
	)	Docket No. 12-150
v.	)	
	)	
Time Warner Cable Inc.	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 25, 2012**

**Released: September 26, 2012**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Smith Media License Holdings, LLC (“Smith Media”), licensee of KEYT-TV, Santa Barbara, California (“KEYT”), has filed a must carry complaint<sup>1</sup> pursuant to Sections 76.7 and 76.61 of the Commission’s rules<sup>2</sup> against Time Warner Cable Inc. (“TWC”), seeking high definition digital carriage on the latter’s cable system serving six communities in western Ventura County, California. TWC filed an opposition to the complaint<sup>3</sup> to which Smith Media replied.<sup>4</sup>

**II. BACKGROUND**

1. Pursuant to Section 614 of the Communications Act of 1934, as amended (the “Act”), and the implementing rules adopted by the Commission, local commercial television broadcast stations, such as KEYT, are entitled to assert mandatory carriage rights on cable systems located within their market.<sup>5</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by the Nielsen

<sup>1</sup> Smith Media’s Complaint (CSR-8647-M), filed May 30, 2012 (“Complaint”).

<sup>2</sup> 47 C.F.R. §§ 76.7 and 76.61.

<sup>3</sup> TWC’s Answer and Opposition to Complaint (CSR-8647-M), filed July 26, 2012 (“Opposition”).

<sup>4</sup> See Reply of Smith Media License Holdings, LLC to Answer and Opposition of Time Warner Cable, Inc. (CSR-8647-M), filed Aug. 8, 2012 (“Reply”).

<sup>5</sup> See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2975-77, ¶¶ 41-46 (1993) (“*Must Carry Order*”). The Commission has subsequently extended mandatory carriage rights to digital television stations under Section 614(a) of the Act and has amended its rules accordingly. See *Carriage of Digital Television Broadcast Signals First Report and Order*, See 16 FCC Rcd 2598, 2606 ¶¶ 15-16, 2610 ¶ 28 (2001) (“*DTV Must Carry Order*”); see also 47 C.F.R. §76.64(f)(4).

Company.<sup>6</sup>

2. Pursuant to Section 325 of the Act and the Commission's rules adopted in the *Must Carry Order*, no commercial television broadcast signal may be retransmitted on a cable system without the express authority of the originating station.<sup>7</sup> This authority may be expressed by a station's election of mandatory carriage pursuant to Section 614 of the Act, or by its election of retransmission consent. Television stations having mandatory carriage rights make their carriage elections at three year intervals for each cable system on which they wish to be carried.<sup>8</sup> A station failing to elect retransmission consent by the October 1st carriage election deadline prior to each three year carriage cycle defaults to must carry status.<sup>9</sup> Furthermore, cable systems must carry the digital broadcast signal of a station entitled to mandatory carriage without downgrading the quality of its signal.<sup>10</sup> Therefore, broadcast channels delivered to cable systems in high definition ("HD") must be carried in HD.<sup>11</sup>

3. Smith Media owns and operates station KEYT in the Santa Barbara-Santa Maria-San Luis Obispo, California, DMA (the "Santa Barbara DMA").<sup>12</sup> Although Ventura County is located in the Los Angeles DMA, in 1995 the Commission had issued a market modification order adding the Ventura County communities of Ojai, Oxnard, Santa Paula, Camarillo, and Ventura – the "western Ventura County" communities – to KEYT's market.<sup>13</sup> However, the Commission did not add the Ventura County communities of Agoura Hills, Calabasas, Fillmore, Moorpark, Port Hueneme, Port Hueneme Naval Center, Simi Valley, Thousand Oaks, and Westlake Village – "eastern Ventura County" – to KEYT's market.<sup>14</sup> KEYT argues that TWC's system serving the communities that have been added to its market in western Ventura County only carry KEYT in analog and/or standard definition (SD) digital formats even though KEYT is a must-carry station and delivers its signal to this system in high definition (HD).<sup>15</sup> Accordingly, on February 29, 2012, after Smith Media received no response from TWC,<sup>16</sup> Smith Media demanded that TWC carry KEYT in HD to the extent that KEYT is broadcast in HD,<sup>17</sup> and it filed the

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<sup>6</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)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its Designated Market Area as determined by The Nielsen Company. 47 C.F.R. § 76.55(e)(2).

<sup>7</sup> See 47 U.S.C. § 325, *Must Carry Order*, 8 FCC Rcd 2965, 2996, ¶ 129, *et seq.* (1993).

<sup>8</sup> See 47 U.S.C. § 534; 47 C.F.R. § 76.56; 47 C.F.R. § 76.64(f)(2).

<sup>9</sup> 47 C.F.R. § 76.64(f)(3).

<sup>10</sup> *Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598, 2629-30 (January 23, 2001) ("*First Report and Order*") ("Consequently, in the context of mandatory carriage of digital broadcast signals, a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any digital programmer (e.g., non-broadcast cable programming, other broadcast digital program, etc.) carried on the cable system, provided, however, that a broadcast signal delivered in HDTV must be carried in HDTV.").

<sup>11</sup> *Id.*

<sup>12</sup> Complaint at 3.

<sup>13</sup> See *id.* (citing *Smith Broad. of Santa Barbara, Ltd.*, 10 FCC Rcd 9447, 9454 ¶ 19 & 9453 ¶ 13 (CSB 1995)).

<sup>14</sup> See *id.* Reply at 5-7.

<sup>15</sup> Complaint at 1-2.

<sup>16</sup> *Id.* at 2 & n.3 (citing Declaration of Michael Granados, attached thereto).

<sup>17</sup> *Id.* at 1-2.

instant must carry Complaint asking the Media Bureau to compel TWC to carry KEYT in HD.<sup>18</sup>

4. TWC has filed an Opposition to the Complaint, arguing that Smith Media elected retransmission consent for KEYT in Ventura County and had not defaulted to must-carry status eligible for HD carriage as alleged in Smith Media's complaint.<sup>19</sup> To substantiate this position, TWC relies on a November 15, 2010, letter by which it argues Smith Media expressly granted rolling retransmission consent to TWC until such time as Smith Media revoked this retransmission consent by providing at least sixty days written notice.<sup>20</sup> TWC notes that Smith Media has never revoked this consent and thus could not have elected or defaulted to must-carry status for the 2012-14 carriage cycle.<sup>21</sup>

5. In its Reply, however, Smith Media responds that its November 15th letter merely grants consent that TWC may retransmit KEYT's signal on TWC's cable systems serving eastern Ventura County – which lie wholly outside KEYT's market.<sup>22</sup> In other words, Smith Media asserts its November 15th letter did not elect retransmission consent with respect to the cable system serving the western Ventura County communities that were added to its market in 1995.<sup>23</sup> Instead, the November 15th letter states it concerns certain “out-of-market communities.”<sup>24</sup> Furthermore, Smith Media attaches a chain of emails between TWC and KEYT personnel, which discuss whether a grant of retransmission consent would be necessary for carriage of KEYT on certain out-of-market TWC systems that were not subject to Smith's market modification and that are standalone systems, not connected to KEYT's must-carry market.<sup>25</sup> Accordingly, KEYT argues it remains a default must carry station with respect to these western Ventura County communities.<sup>26</sup>

### III. DISCUSSION

6. TWC has failed to disprove record evidence submitted by KEYT indicating that KEYT's grant of retransmission consent applies only to TWC's systems located in eastern Ventura County, and not to TWC's system in western Ventura County.<sup>27</sup> Furthermore, we disagree with TWC and find that KEYT is a must-carry station in western Ventura County. Because KEYT broadcasts in HD, the Commission's rules require TWC to carry KEYT's signal in HD.<sup>28</sup> Accordingly, we will order TWC to

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<sup>18</sup> *Id.* at 5.

<sup>19</sup> Opposition at 3.

<sup>20</sup> *Id.* at 3 & n.8 (citing Exhibit A, Letter from Michael Granados, CEO, Smith Media, LLC, to Carrie Bocian, Senior Director/Programming, TWC, Nov. 15, 2010) (“November 15th Letter”).

<sup>21</sup> *See id.* at 4-5.

<sup>22</sup> Reply at 5-7.

<sup>23</sup> *Id.* at 6-7 & n.23 (stating that KEYT had not made any election for the western Ventura County system for the 2009-2011 carriage cycle and had defaulted to must-carry status for that cycle, and therefore it would have been unnecessary and inappropriate for it to elect retransmission consent on that system during 2010).

<sup>24</sup> Reply at Exhibit A, November 15th Letter.

<sup>25</sup> *See* Reply at Exhibit 3 (Email from Kevin Latek, Counsel for KEYT to Sarah Sully, Assistant Chief Counsel and Carrie Bocian, Senior Director/Programming, Oct 29, 2010).

<sup>26</sup> *See* Reply at 7 (“KEYT-TV was must-carry on the western Ventura system in 2010, and it remains so today.”). Furthermore, Smith Media argues its “granting” of retransmission consent did not constitute the proper “election” of retransmission consent necessary for in-market system carriage pursuant to the Commission's rules. *Id.* at 3-5.

<sup>27</sup> Nor has TWC disputed that KEYT delivers a good quality signal to TWC's systems.

<sup>28</sup> *See supra* note 10 (citing *First Report and Order*, 16 FCC Red at 2629-30).

carry KEYT in HD on its cable system serving the communities at issue in western Ventura County.

#### IV. CONCLUSION

7. We find that KEYT is a local commercial television station broadcasting in HD, with mandatory carriage rights on TWC's cable system serving the western Ventura County communities of Ojai, Oxnard, Santa Paula, Camarillo, and Ventura, California. Therefore we find that TWC must carry KEYT in HD in the aforementioned cable system communities and we grant Smith Media's mandatory carriage complaint.

#### V. ORDERING CLAUSE

8. Accordingly, **IT IS ORDERED** that the Mandatory Carriage Complaint filed by Smith Media License Holdings, LLC, licensee of KEYT-TV, Santa Barbara, California **IS GRANTED**, and Time Warner Cable, Inc. **SHALL COMMENCE CARRIAGE** of station KEYT-TV in High Definition within 60 days of the release of this Order, on Time Warner's cable system serving the Ventura County communities of Ojai, Oxnard, Santa Paula, Camarillo, and Ventura, California.

9. 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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