

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

In the Matter of
Parker Broadcasting of Dakota License, LLC,
KRDK-TV, Valley City, North Dakota
v.
Cable One, Inc.
CSR-8921-M
Docket No. 16-69

MEMORANDUM OPINION AND ORDER

Adopted: August 15, 2016

Released: August 15, 2016

By the Chief, Media Bureau:

I. INTRODUCTION

1. Parker Broadcasting of Dakota License, LLC ("Parker"), licensee of commercial broadcast television station KRDK-TV, Valley City, North Dakota, filed the above-captioned must carry complaint pursuant to Sections 76.7 and 76.61 of the Commission's rules, seeking to ensure carriage on cable channel 4, the channel number corresponding to the station's PSIP channel assignment, on cable systems operated by Cable One, Inc. ("Cable One") in the Fargo-Valley City, North Dakota designated market area (Fargo-Valley DMA). Cable One filed an answer to Parker's Complaint stating that it would commence carriage of KRDK-TV by July 1, 2016, but it has now refused to do so. Gray Television Licensee, LLC ("Gray") filed comments, and Parker filed a reply. For the reasons that follow, we grant Parker's Complaint.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act of 1934, as amended (Act), and the

1 47 C.F.R. § 76.7, 76.61.

2 PSIP consists of data transmitted along with a station's DTV signal which tells DTV receivers information about the station and what is being broadcast and provides a method for receivers to identify a DTV station and determine how the receiver can tune to it. PSIP enables receivers to link a station's digital RF channel with its "virtual" or major channel number - the number viewers see on their channel receiver when they view a DTV station over the air - regardless of the actual RF channel used for digital transmission. Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order, 19 FCC Rcd 18279, 18344-6, paras. 149-53 (2004)

3 Must Carry Complaint of Parker Broadcasting of Dakota License, LLC against Cable One, Inc., CSR-8921-M, Docket No. 16-69 (filed March 2, 2016) (Parker Complaint).

4 Answer of Cable One at 1, CSR 8921-M, Docket No. 16-69 (filed March 17, 2016) (Cable One Answer).

5 Reply of Gray Television Licensee, LLC, CSR 8921-M, Docket No. 16-69 (filed March 22, 2016) (Gray Comments); Reply to Comments of Parker Broadcasting of Dakota License, LLC, CSR 8921-M, Docket No. 16-69 (filed April 6, 2016) (Parker Reply).

implementing rules adopted by the Commission, commercial television broadcast stations, such as KRDK-TV, are entitled to assert mandatory carriage rights on cable systems located within their market.<sup>6</sup> A station's market for this purpose is its DMA, as defined by The Nielsen Company.<sup>7</sup> The Commission has clarified that "broadcast stations may assert their carriage and channel positioning rights at any time so long as they have not elected retransmission consent."<sup>8</sup> Section 614 of the Act and Sections 76.57 of the Commission's rules provide commercial television stations with four possible channel positioning options to which they may assert their rights.<sup>9</sup> Specifically, a commercial broadcast station may elect to be carried on: (1) the channel number on which the station is broadcast over the air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992.<sup>10</sup> Alternatively, a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.<sup>11</sup>

3. Cable One operates cable television systems serving various communities in the Fargo-Valley DMA. Cable One does not dispute KRDK-TV's right to carriage. Cable One's Answer states that carriage of KRDK-TV would commence by July 1, 2016.<sup>12</sup> However, Cable One now refuses to carry KRDK-TV because of its preexisting contractual agreement with Gray to carry its channel, KX4, on channel 4.<sup>13</sup> Gray has filed comments arguing that when Parker agreed to purchase KRDK-TV, it agreed not to seek mandatory carriage for KRDK-TV on channel 4.<sup>14</sup> However, Parker disputes Gray's assertion that there was any such understanding and further indicates that there is nothing in the purchase agreement to support such a contention.<sup>15</sup> Gray also argues that Parker's Complaint should be dismissed because it was filed late.<sup>16</sup>

4. In order to understand the timing of KRDK-TV's election, a brief background of the transaction between Parker and Gray is necessary. Parker's parent company, Major Market Broadcasting of North Dakota, Inc. ("MMBI"), completed its purchase of KRDK-TV (formerly KXJB-TV) on December 18, 2014, months after the October 1, 2014 deadline for television stations to select either must carry or retransmission consent elections for the 2015-2017 election cycle.<sup>17</sup> Parker states that the

---

<sup>6</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2975-77, paras. 41-46 (1993). The Commission subsequently has extended mandatory carriage rights to digital television stations under Section 614(a) of the Act and amended its rules accordingly. *Carriage of Digital Television Broadcast Signals*, First Report and Order, 16 FCC Rcd 2598, 2606, paras. 15-16, 2610, para. 28 (2001); 47 C.F.R. § 76.64(f)(4).

<sup>7</sup> Section 614(h)(1)(C) of the Act 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. 47 U.S.C. § 534(h)(1)(C). Section 76.55(3)(2) of the Commission's rules specifies that a commercial broadcast television station's market is its DMA as determined by The Nielsen Company. 47 C.F.R. § 76.55(e)(2).

<sup>8</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, Clarification Order, 8 FCC Rcd 4142, 4144, para. 15 (1993).

<sup>9</sup> 47 U.S.C. § 534; 47 C.F.R. § 76.57.

<sup>10</sup> 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(a).

<sup>11</sup> 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57(d).

<sup>12</sup> Cable One Answer at 1.

<sup>13</sup> Letter from Craig Gilley, Mintz Levin, to William Lake, Chief, Media Bureau, July 20, 2016 ("Gilley Letter").

<sup>14</sup> Gray Comments at 1-2.

<sup>15</sup> Parker Reply at 2-3.

<sup>16</sup> Gray Comments at 2-3.

<sup>17</sup> Parker Reply at 3.

previous owner did not make an election.<sup>18</sup> Pursuant to the transaction, Gray retained KRDK-TV's CBS affiliation and moved the programming to KVLV-TV, which is broadcast on Channel 11 in Fargo.<sup>19</sup> The CBS affiliated programming was placed on digital subchannel KX4, which is airing on channel 4 pursuant to a contractual agreement with Cable One.<sup>20</sup> Subsequently, on October 7, 2015, Gray filed a Petition for Waiver and Request for Reassignment of PSIP Channels ("Petition for Waiver") requesting that KX4 be assigned virtual channel 4 and KRDK-TV be assigned a new virtual channel.<sup>21</sup> Parker opposed Gray's Petition for Waiver. On March 2, 2016, Parker filed its must carry complaint.<sup>22</sup> On June 28, 2016, the Media Bureau denied Gray's Petition for Waiver and stated that KRDK-TV retains the right to operate on virtual channel 4.<sup>23</sup>

5. Cable One filed an answer acknowledging that KRDK is assigned PSIP "channel 4 for its service area" and that it is a "must-carry station for cable system carriage purposes."<sup>24</sup> It further indicates that KRDK-TV "did not make an affirmative election one way or another during the last must-carry/retransmission consent election cycle."<sup>25</sup> Cable One states that it could not carry KRDK-TV on channel 4 because of the "preexisting carriage agreement with KVLV-TV and the contractual obligation to carry KX4 on that channel."<sup>26</sup> Cable One further indicated that Gray's Petition for Waiver made it uncertain whether KRDK-TV or KVLV-TV would have the right to carriage on channel 4.<sup>27</sup> Cable One then implored the Commission's to act on KVLV-TV's Petition for Waiver, but went on to state of its own volition that "absent Commission action on the waiver request, Cable One will make the necessary preparations, including providing proper prior notice to subscribers pursuant to Section 76.1601, to initiate carriage of KRDK on channel 4 on its Fargo-Valley City DMA cable systems on or about July 1, 2016."<sup>28</sup> Although the Media Bureau, as indicated above, denied Gray's Petition for Waiver, Cable One did not commence carrying KRDK-TV on July 1, 2016 as represented in its Answer. Commission staff subsequently learned weeks later that Cable One did not commence carriage of KRDK-TV on channel 4 as represented in its Answer. On July 20, 2016, Cable One submitted an update to the record stating that it has not commenced carrying KRDK-TV because "it has a valid retransmission consent agreement with Gray Television requiring the Fargo, North Dakota system to carry a multicast stream of Gray's station KVLV-TV on channel 4."<sup>29</sup> Cable One then states that "at this time, without a specific order in MB Docket 16-69 from the Commission ordering carriage of KRDK on the cable system's channel 4, Cable One is bound by that contract and unable to begin carriage of KRDK on that channel."<sup>30</sup>

6. We grant KRDK-TV's complaint. We find that the unopposed representations made by

---

<sup>18</sup> Parker Complaint at 3.

<sup>19</sup> Gray Comments at 1-2.

<sup>20</sup> *Id.*

<sup>21</sup> Gray Petition for Waiver and Request for Reassignment of PSIP Channels at 1-2 (filed Oct. 7, 2015). Gray acknowledged in its Petition for Waiver that KRDK-TV is assigned virtual channel 4.

<sup>22</sup> Parker Complaint.

<sup>23</sup> Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau, to Gray Television Licensee, LLC and Parker Broadcasting of Dakota License, LLC (June 28, 2016).

<sup>24</sup> Cable One Answer at 2.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 3-4.

<sup>29</sup> Gilley Letter.

<sup>30</sup> *Id.*

KRDK-TV demonstrate that it is a local full-power commercial television station qualified for carriage on Cable One's system. Under 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 as a cable operator is not entitled to carriage.<sup>31</sup> Cable One's Answer did not challenge any of the assertions contained in Parker's Complaint. Consequently, we order Cable One to carry KRDK-TV's signal on channel 4, or a channel position mutually agreeable to Parker and Cable One, on its cable systems serving the Fargo-Valley City, North Dakota DMA.

7. Finally, we address and dismiss two arguments asserted by Gray in comments submitted in response to Parker's Complaint. Gray initially argues that Parker agreed pursuant to its purchase of KRDK-TV not to select mandatory carriage on channel 4.<sup>32</sup> However, this assertion is denied by Parker and is not substantiated by any evidence in the record. Accordingly, we reject Gray's unsubstantiated and self-serving argument. We also dismiss Gray's argument that Parker's Complaint is late because Parker made its initial carriage demand in late 2015 and the complaint was not filed until March 2, 2016.<sup>33</sup>

8. Under Section 76.61 of our rules, a local television station must notify the cable operator, in writing, of the cable operator's failure to carry its station and identify for the cable operator the reasons that it believes the cable operator is obligated to carry the signal.<sup>34</sup> KRDK-TV sent Cable One a letter dated August 1, 2015, referencing "Carriage of Station KRDK-TV, informing Cable One of the new owner, asked for mandatory carriage, and stated that it requests carriage on cable channel 4, "which is the Station's authorized over-the-air channel."<sup>35</sup> Over the next several months, there were numerous e-mails between KRDK-TV management and Cable One that continued until January 2016.<sup>36</sup> In fact, an e-mail from Cable One dated January 8, 2016, specifically indicated that it "had engaged counsel and expect an opinion soon on the channel 4 request."<sup>37</sup> On January 25, 2016, KRDK-TV sent Cable One a letter that stated in the caption: KRDK-TV Must-Carry Demand."<sup>38</sup> The letter goes on to state that this is "our second formal request for carriage, under the mandatory carriage provisions" of the Communications Act.<sup>39</sup> The letter goes on to indicate that "KRDK-TV either elected must-carry status by October 1, 2014, or failed to make any election, in which case it is a must-carry station by default under Section 76.64(f)(4) of the FCC's Rules."<sup>40</sup> Cable One's general manager, Scott Geston, responded with a letter dated January 11, 2016, stating that it "is unable to honor KRDK-TV's demand to be carried on channel 4 on that system at this time."<sup>41</sup> It is not clear that KRDK-TV's August 2015 letter was in fact a demand for carriage, or that Cable One viewed it that way because it did not specifically deny carriage. However, even if KRDK-TV's August 2015 letter was deemed a demand for carriage, there was no denial by Cable One until January 11, 2016. In fact, the record clearly indicates that the parties continued negotiating until KRDK-TV's January 2016 letter, when KRDK-TV demanded carriage and Cable One responded with a formal denial of carriage. Our rules require that a cable carriage complaint must be filed within "60

---

<sup>31</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>32</sup> Gray Comments at 1.

<sup>33</sup> *Id.* at 2-4.

<sup>34</sup> 47 C.F.R. § 76.61.

<sup>35</sup> Parker Reply, exhibit A.

<sup>36</sup> *Id.*, Exhibit B.

<sup>37</sup> *Id.*

<sup>38</sup> Parker Complaint, Exhibit 1.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*, Exhibit 2.

days after – [t]he denial by a cable operator of [a] request for carriage or channel position . . . .”<sup>42</sup> Here, Parker’s Complaint was filed on March 2, 2015 – 51 days after Cable One’s January 11, 2016 denial of carriage. Thus, Parker’s Complaint was timely filed.

9. Finally, we caution Cable One regarding the statement in its Answer that “absent Commission action on the waiver request, Cable One will make the necessary preparations, including providing proper prior notice to subscribers pursuant to Section 76.1601, to initiate carriage of KRDK on channel 4 on its Fargo-Valley City DMA cable systems on or about July 1, 2016.”<sup>43</sup> Cable One made this statement voluntarily to the Commission. Nevertheless, Cable One reneged on this unsolicited commitment to the Commission even though there was no intervening change in circumstances that would render honoring that commitment difficult or impossible. Cable One’s contractual agreement with Gray predated the filing of Cable One’s Answer on March 17, 2016. We strongly remind Cable One of its duty of candor to the Commission and the requirement to make truthful and accurate statements to the Commission.<sup>44</sup>

### III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the complaint filed by Parker Broadcasting of Dakota License, LLC **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended.<sup>45</sup> Cable One **IS ORDERED** to commence carriage of KRDK-TV on channel 4, or a channel position mutually agreeable to Parker and Cable One, on its cable systems serving the Fargo-Valley City, North Dakota designated market area within forty-five (45) days of the release date of this order.<sup>46</sup>

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission’s rules.<sup>47</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division  
Media Bureau

---

<sup>42</sup> 47 C.F.R. § 76.61(a)(5)(i).

<sup>43</sup> Cable One Answer at 2.

<sup>44</sup> 47 C.F.R. § 1.17.

<sup>45</sup> 47 U.S.C. § 534.

<sup>46</sup> 47 C.F.R. § 76.61(a)(4).

<sup>47</sup> 47 C.F.R. § 0.283.