

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

In the Matter of
Parker Broadcasting of Dakota License, LLC,
Licensee of KRDK-TV, Valley City, North Dakota
v.
Park Region Mutual Telephone Company
Parker Broadcasting of Dakota License, LLC,
Licensee of KRDK-TV, Valley City, North Dakota
v.
Tekstar Communications d/b/a Arvig
MB Docket No. 21-357
CSR-8999-M
MB Docket No. 21-358
CSR-9000-M

MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2021

Released: December 17, 2021

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

I. INTRODUCTION

1. Parker Broadcasting of Dakota License, LLC (Parker Broadcasting), licensee of commercial broadcast television station KRDK-TV, Valley City, North Dakota, filed the above-captioned must carry complaints against Park Region Mutual Telephone Company (Otter Com) and Tekstar Communications Inc. d/b/a Arvig (Arvig) for their refusal to carry KRDK-TV on their cable systems serving the Fargo, North Dakota designated market area (Fargo DMA).1 Otter Com and Arvig filed oppositions,2 and Parker Broadcasting filed replies.3 For the reasons set forth below, we grant Parker Broadcasting's complaints.4

II. BACKGROUND

2. Pursuant to section 614 of the Communications Act of 1934, as amended (Act), and the 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.5

1 Parker Broadcasting Complaint, filed Aug. 16, 2021 (Parker Otter Com Complaint), CSR-8999-M, MB Docket No. 21-357; Parker Broadcasting Complaint, filed Aug. 16, 2021 (Parker Arvig Complaint), CSR-9000, MB Docket No. 21-358.

2 Park Region Mutual Telephone Company Opposition, filed Sept. 7, 2021 (Otter Com Opposition), CSR-8999-M, MB Docket No. 21-357; Tekstar Communications Inc. d/b/a Arvig Opposition, filed Sept. 7, 2021 (Arvig Opposition), CSR-9000, MB Docket No. 21-358.

3 Parker Broadcasting Reply to Opposition, filed Sept. 17, 2021 (Parker Reply to Otter Com), CSR-8999-M, MB Docket No. 21-357; Parker Broadcasting Reply to Opposition, filed Sept. 17, 2021 (Parker Reply to Arvig), CSR-9000-M, MB Docket No. 21-358.

4 Because Parker Broadcasting has filed the same complaint against Otter Com and Arvig, and the underlying facts in most instances, and the basis for carriage and oppositions are identical, we have consolidated these complaints for administrative efficiency.

5 Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal (continued....)

A station's market for this purpose is its DMA, as defined by The Nielsen Company.⁶ 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."⁷

3. 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.⁸ One method of doing so is for a cable operator to establish that a subject television station, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁹ However, if a station fails to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights under the Commission's rules if it provides a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.¹⁰

4. Otter Com and Arvig provide communications services to residents in various communities in the Fargo DMA.¹¹ Parker Broadcasting sought carriage for KRDK-TV on the Otter Com and Arvig systems for the remainder of the current must-carry election cycle that expires on December 31, 2023.¹² Otter Com's and Arvig's principal headend is located in Perham, Minnesota.¹³ Otter Com and Arvig separately rejected Parker Broadcasting's carriage request because the distance from the Perham headend to KRDK-TV's transmitter is almost a 100 miles, and, as a result, Otter Com and Arvig concluded that KRDK-TV failed to provide a good quality signal.¹⁴ Otter Com and Arvig separately informed Parker Broadcasting that they would not carry KRDK-TV for that reason.¹⁵

5. Parker Broadcasting states that it sent letters dated May 14, 2021 to Otter Com and Arvig demanding carriage of KRDK-TV on all of their cable systems serving the Fargo DMA.¹⁶ The letter

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 CFR § 76.64(f)(4).

⁶ 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 CFR § 76.55(e)(2).

⁷ *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).

⁸ 47 U.S.C. § 534; 47 CFR § 76.57.

⁹ 47 U.S.C. § 534(b)(6); 47 CFR § 76.57(a).

¹⁰ 47 U.S.C. § 534(b)(6); 47 CFR § 76.57(d).

¹¹ Otter Com Opposition at 2; Arvig Opposition at 2.

¹² Parker Otter Com Complaint at 1; Parker Arvig Complaint at 1.

¹³ Otter Com Opposition at 1-2, fn. 3 (stating that the principal headend is in Perham and managed by Tekstar Communications, Inc.); Arvig Opposition at 2.

¹⁴ Otter Com Opposition at 2; Arvig Opposition at 2.

¹⁵ Otter Com Opposition at 2; Arvig Opposition at 2.

¹⁶ *Id.* Otter Com received Parker Broadcasting's carriage demand letter in May 2021, and responded on May 27, 2021, via certified mail. Otter Com Opposition at 2-3. The letter states that a "review of the station's coverage map shows the headend is well outside the area in which a station can deliver a signal of any strength, let alone a good quality signal as required by FCC rules." *Id.* at 3 and Exh.4. Thereafter, Otter Com sent Parker Broadcasting a

(continued....)

further stated that if Otter Com or Arvig were unable to receive a good quality signal, “Parker Broadcasting agrees to ensure delivery of such good quality signal through alternative means.”¹⁷ The letters were received by Otter Com and Arvig on May 18, 2021.¹⁸ Otter Com and Arvig filed their responses timely, although neither submitted signal testing results. According to Parker Broadcasting, it remains in active discussions with the parties in an attempt to resolve the technical issues, but it filed the complaints to protect its must carry rights.¹⁹

III. DISCUSSION

6. We agree with Parker Broadcasting that it is entitled to mandatory carriage under the provisions of section 614 of the Act because KRDK-TV qualifies as a local television station on the Otter Com and Arvig cable systems, and it has made a commitment to provide, at its own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to the principal headend of each system.²⁰ Neither Otter Com or Arvig dispute Parker Broadcasting’s assertion that KRDK-TV is entitled to must carry status. Thus, we find that the unopposed representations made by KRDK-TV demonstrate that it is a local full-power commercial television station qualified for carriage on the Otter Com and Arvig systems.

7. Under our must carry rules, cable operators have the burden of showing that a broadcast station otherwise entitled to carriage does not provide a good quality signal to its cable system’s principal headend. The Commission previously has found that a claim of poor signal quality by a cable operator without the requisite engineering data cannot be relied upon to support a refusal of carriage.²¹ Although Parker Broadcasting contends that KRDK-TV currently delivers an adequate signal to the Otter Com and Arvig,²² Otter Com and Arvig argue that Parker Broadcasting’s must carry complaints should be denied because KRDK-TV cannot satisfy the requirement that it “deliver a good quality signal at or above -61 dBm.”²³ Otter Com and Arvig state that they separately conducted signal strength testing between June and August, 2021, and the testing indicated that KRDK-TV failed to deliver a good quality signal.²⁴

letter, dated June 22, 2021, stating that it had KRDK-TV’s signal tested at its headend, and that the Channel power was -46.6 dbmV = -95.3 dBm and the signal quality was “not reliable and very poor.” *Id.* Arvig received Parker Broadcasting’s carriage demand letter in May 2021. Arvig Opposition at 3. Arvig states that it conducted preliminary testing in May 2021, but KRDK-TV’s signal was weak. *Id.* The parties acknowledge that Arvig responded to the letter via email dated June 17, 2021, after Parker Broadcasting’s president, Ravi Kapur, alerted Arvig that the time was expiring for it to respond. *Id.* at 3; Parker Arvig Complaint at 2, fn 9, and Att. D. Although Arvig references the email in its pleading as Exhibit 2, it was not included with the filing. *See* Arvig Opposition at 3, fn 9. The email states that Arvig tested the “off air signal level from our headend and have found the signal level to be insufficient to qualify as a good quality signal.” E-mail from Joel Smith, Manager of Video Operations, Arvig, to Ravi Kapur, Principal, Major Market Broadcasting, (June 17, 2021). *See* Parker Arvig Complaint, at 2, Attach. D. The Arvig response email did not include any testing results.

¹⁷ Otter Com Opposition at 3. The letter to Arvig made the same commitment.

¹⁸ *Id.*

¹⁹ Parker Reply to Otter Com at 7; Parker Reply to Arvig at 8.

²⁰ Parker Otter Com Complaint at 4-5; Parker Arvig Complaint at 4-5 (stating that if it cannot deliver an adequate over-the-air signal to the Otter Com and Arvig headends, it “shall purchase and install any additional equipment necessary to deliver an adequate signal to” their respective headend through alternative means).

²¹ *See In the Matter of Rancho Palos Verde Broadcasters, Inc.*, 18 FCC Rcd 7068, 7071, para. 7 (2003).

²² Parker Otter Com Complaint at 5; Parker Arvig Complaint at 5 (stating that “KRDK-TV delivers a full power signal throughout most of the Fargo DMA”).

²³ Otter Com Opposition at 5; Arvig Opposition at 5.

²⁴ *Id.* According to Otter Com and Arvig, KRDK-TV’s highest signal strength reading was only -91 dBm, with an average strength reading over the period of -91.9. *Id.*

According to Otter Com and Arvig, KRDK-TV's failure to deliver a good quality signal is the result of the geographic distance between the KRDK-TV transmitter and the Perham headend, almost 100 miles apart, which is beyond the "edge of KRDK-TV's NLSC (predicted noise limited service contour)."²⁵

8. As a preliminary matter, Parker Broadcasting alleges that Otter Com and Arvig did not provide signal test results in their initial response to the carriage demand letters as required by Commission rules.²⁶ We agree that the initial responses to the carriage demand letters did not satisfy the testing requirements of the Commission's rules.²⁷ However, Otter Com and Arvig subsequently provided test results that purport to be in compliance with Commission rules.²⁸ As Otter Com and Arvig correctly assert, the Commission has accepted properly administered testing results when they are submitted with the filing of the opposition, and thus we reject Parker Broadcasting's claim that we should grant its complaint on this basis.²⁹

9. Parker Broadcasting also attempts to refute the findings of the signal strength testing conducted by Otter Com and Arvig of KRDK-TV's signal by arguing that the tests failed to comply with the Commission rules for proper testing.³⁰ However, Otter Com and Arvig contend that their signal testing met all the requirements under section 76.61(a)(2) of the Commission's rules.³¹ They further assert that KRDK-TV has not undertaken any engineering analysis of its own.³² A review of the signal strength tests of KRDK-TV's signal provided by Otter Com and Arvig indicates that all of the tests were conducted employing good engineering practices and demonstrate that KRDK-TV does not presently provide a good quality signal at the Perham headend.

10. Although the signal strength testing indicates that KRDK-TV does not presently provide a good quality signal, we note that KRDK-TV has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet the signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.³³ As Parker Broadcasting notes, even if a cable operator meets its burden of showing that a full power commercial television station is not entitled to carriage for failing to provide a good quality signal at the operator's headend, "the station is still entitled to obtain carriage rights by promising to provide the operator with specialized equipment, at the station's expense, which will improve the station's signal to an acceptable quality at a cable system's principal headend."³⁴ Parker Broadcasting asserts that it remains committed to delivery of an adequate signal by alternative means. By making this commitment it will be eligible for mandatory carriage by Otter Com and Arvig on their systems serving the North Dakota DMA when it provides a signal that meets the Commission's signal

²⁵ Otter Com Opposition at 6; Arvig Opposition at 6.

²⁶ Parker Otter Com Complaint at 7; Parker Arvig Complaint at 5-6.

²⁷ 47 CFR § 76.61(a)(2).

²⁸ Otter Com Opposition at 7; Arvig Opposition at 7.

²⁹ Otter Com Opposition at 7, fn 27 (*citing KM Television of Flagstaff, L.L.C. v. Cable One, Inc.*, 18 FCC Rcd 153 (2003)); Arvig Opposition at 7, fn. 26 (*citing KM Television of Flagstaff, L.L.C. v. Cable One, Inc.*, 18 FCC Rcd 153 (2003)).

³⁰ Parker Otter Com Complaint at 7-8; Parker Arvig Complaint at 5-7. Specifically, Parker Broadcasting argues that Otter Com and Arvig failed to provide sufficient information regarding the equipment used to test KRDK-TV's signal as required by 47 CFR § 76.61(a)(2). Parker Otter Com Complaint at 8; Parker Arvig Complaint at 7.

³¹ Otter Com Opposition at 7-8; Arvig Opposition at 7-8; *see* 47 CFR § 76.61(a)(2).

³² Otter Com Opposition at 6; Arvig Opposition at 6.

³³ 47 CFR § 76.55(c)(3).

³⁴ Parker Reply to Otter Com at 4; Parker Reply to Arvig at 4.

strength criteria.³⁵

11. In adopting this conclusion, we agree with Otter Com and Arvig's assertion that cable operators are not required to expend extraordinary efforts to accommodate a broadcaster that does not provide a good quality signal to the cable operator's headend. However, we find that is not the case here, as Parker Broadcasting has agreed to bear the cost of providing a good quality signal to the Perham headend, and all that is required of Otter Com and Arvig is that they accept delivery of KRDK-TV's signal by alternate means and at KRDK-TV's sole expense. Otter Com and Arvig allege that KRDK-TV has failed to provide "any concrete plans for providing a good quality signal" and they speculate that ability of the station to deliver a good quality signal to Otter Com and Arvig's Perham headend "appears unlikely without extraordinary means."³⁶ In response, Parker Broadcasting asserts that a must carry complainant is not obligated to provide concrete plans for delivering a good quality signal to a cable operator's headend as long as it pledges to bear the costs of providing whatever equipment is necessary to ensure a good quality signal.³⁷ In this instance, we agree that Parker Broadcasting has satisfied its obligation by pledging to purchase and install any additional equipment necessary to deliver an adequate signal to the Otter Com and Arvig headend while it continues to explore alternative means of delivery.³⁸

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that the complaints filed by Parker Broadcasting of Dakota License, LLC **IS GRANTED** pursuant to section 614(d)(3) of the Communications Act of 1934, as amended.³⁹ Park Region Mutual Telephone Company and Tekstar Communications Inc. d/b/a Arvig **ARE ORDERED** to commence carriage of KRDK-TV on their cable systems serving the Fargo, North Dakota designated market area within sixty (60) days of the date that KRDK-TV provides a good quality signal to the cable systems' principal headend.

13. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.⁴⁰

FEDERAL COMMUNICATIONS COMMISSION

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³⁵ Parker Reply to Otter Com at 5-6; Parker Reply to Arvig at 6-7.

³⁶ Otter Com Opposition at 7-9; Arvig Opposition at 7-9.

³⁷ Parker Reply to Otter Com at 5-6; Parker Reply to Arvig at 6-7.

³⁸ Parker Reply to Otter Com at 6; Parker Reply to Arvig at 7.

³⁹ 47 U.S.C. § 534.

⁴⁰ 47 CFR § 0.283.