

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

In re:)	
)	
Complaint of University Broadcasting Company against Lakeland Cable TV, Inc.)	CSR-4712-M
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: July 23, 1996

Released: July 29, 1996

By the Chief, Consumer Protection and Competition Division, Cable Services Bureau:

INTRODUCTION

1. On April 8, 1996, University Broadcasting Company, licensee of Station KWMJ (Channel 53), Tulsa, Oklahoma, filed a "Complaint" with the Commission, pursuant to §76.61 of the Commission's Rules, claiming that, despite repeated requests, Lakeland Cable TV, Inc. ("Lakeland"), operator of cable systems serving the Oklahoma communities of Canadian and Indianola, both of which are located in Pittsburgh County, has refused to carry KWMJ, even though the station and each of Lakeland's systems is located in the Tulsa, Oklahoma area of dominant influence (or "ADI"). This complaint is unopposed.

SUMMARY OF THE PLEADING

2. According to KWMJ, it advised Lakeland by letter dated January 10, 1996, that it was electing must-carry status, rather than retransmission consent, and that it would begin operations on January 24, 1996. Since it received no response, KWMJ sent Lakeland another letter dated January 30, 1996, stating that it had, in fact, commenced operations on January 24, 1996 and repeating its must-carry election. Again Lakeland did not respond, so KWMJ sent it a third letter dated February 9, 1996, asking that the systems comply with the Commission's mandatory carriage rules and providing names of station personnel who might assist in evaluating KWMJ's signal. However, Lakeland neither responded to any of these letters, nor added the station. On February 28, 1996, KWMJ's Chief Engineer met with employees of Lakeland, and the station's engineer offered to purchase high gain antennas for Lakeland to use in receiving the station's signal. This offer was confirmed by letter dated March 27, 1996 from KWMJ to Lakeland in which the station stated that it had, in fact, ordered the antennas for the systems' use. In another letter, also dated March 27, 1996, from KWMJ to Lakeland the station repeated its request that the cable operator confirm in writing that it would add the signal. Thereafter, on April 4, 1996, Lakeland responded by means of a handwritten note on KWMJ's carriage letter dated March 27,

1996, stating that two other local stations would commence broadcasting on or about May 1, 1996, and that the system planned to fulfill its mandatory carriage requirement by adding one or two of them, rather than adding KWMJ.

DISCUSSION

3. According to §76.55(e) of the Commission's Rules, the market of a commercial television broadcast station, such as KWMJ, is defined as its Area of Dominant Influence (or "ADI"). A commercial station is entitled to demand carriage on any cable system operating in that ADI. 47 C.F.R. §75.56(b). KWMJ is in the Tulsa, Oklahoma ADI, in which Pittsburgh County is also located. Thus, KWMJ is entitled to demand mandatory carriage on the cable systems serving both the communities of Canadian and Indianola since they are both located in Pittsburgh County.

4. A potential exception to the must-carry rule exists where a cable system has already filled its must-carry complement by devoting one-third of its capacity to other must-carry signals. 47 C.F.R. §76.56(b)(2). In this case, however, it does not appear that the systems are devoting a third of their activated channel capacity to mandatory carriage.¹ Furthermore, at the time KWMJ requested carriage on Lakeland's systems, the systems' sole response was to note that Lakeland intended to meet its must-carry obligations by adding one or two new stations after they commenced broadcasting locally several months in the future. Therefore, we must conclude that, at the time KWMJ made its carriage requests, the systems had sufficient channel capacity which was not already devoted to mandatory carriage of other local commercial stations to add the signal.

5. Another potential exception to the mandatory carriage of a station with must-carry rights arises when a station demanding carriage fails to provide a good quality signal to the system's principle headend. However, we find that KWMJ has satisfied this criteria for carriage by committing to install the equipment necessary to deliver a good quality signal to Lakeland's principal headend. The 1992 Cable Act requires only that a station ". . . agree to be responsible for the costs of delivering to the cable system a signal of good quality."² In this instance, KWMJ has agreed to be responsible for installing all specialized equipment necessary to deliver a good quality signal. Lakeland cannot, therefore, deny the station carriage on the premise that the Commission's signal quality standards have not been met.³

¹ According to Lakeland's last system registration statement, which was filed with the Commission on March 23, 1989, it carried the following five off-the-air television broadcast stations on its 25 channel cable systems: KOKI (Ind., Channel 23), KJRH (NBC, Channel 2), KOTV (CBS, Channel 6), KTUL-TV (ABC, Channel 8), all Tulsa, Oklahoma, and KOET (Educ., Channel 3), Eufaula, Oklahoma.

² 47 U.S.C. §534(h)(1)(B)(iii).

³ We expect that Lakeland will cooperate with KWMJ's efforts to provide a good quality signal to the system's headend.

ORDERING CLAUSES

6. Accordingly, IT IS ORDERED, That the "Complaint" (CSR-4712-M), filed April 8, 1996, by University Broadcasting Company, licensee of Television Broadcast Station KWMJ (Ind., Channel 53), Tulsa, Oklahoma, IS GRANTED in accordance with §614 (d)(3) of the Communications Act of 1934, as amended (47 U.S.C. §534) and 47 C.F.R. §76.56(b).

7. IT IS FURTHER ORDERED, That KWMJ shall notify the relevant cable systems in writing of its carriage and channel position elections (§§76.56, 76.57, and 76.64(f) of the Commission's Rules), within thirty (30) days of the release date of this *Memorandum Opinion and Order*.

8. IT IS FURTHER ORDERED, That the affected cable systems shall commence carriage of KWMJ sixty (60) days from the date that the station provides the necessary specialized equipment to receive a good quality signal at Lakeland's principal headend.

9. This action is taken pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Gary M. Laden
Chief, Consumer Protection and Competition Division
Cable Services Bureau