

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

In re:	)	
	)	
	)	
Complaint of University Broadcasting Company against Donrey Cablevision	)	CSR-4715-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, DR Partners d/b/a Donrey Cablevision ("Donrey"), operator of cable systems serving the Oklahoma communities of Dewey and Bartlesville, both of which are located in Washington County, has refused to carry KWMJ, even though the station and each of Donrey's systems is located in the Tulsa, Oklahoma area of dominant influence ("ADI"). This complaint is unopposed.

**SUMMARY OF THE PLEADING**

2. According to KWMJ, it advised Donrey 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. On January 30, 1996, KWMJ sent Donrey another letter stating that it had, in fact, commenced operations on January 24, 1996. In response, Donrey submitted the results of five of its signal strength measurements taken at its headend on February 8, 1996, which ranged between -60 dBm and -61 dBm, and advised KWMJ by letter dated February 9, 1996 that, since its signal strength had measured less than the requisite level of -45 dBm, the system ". . . must deny carriage on the basis of your signal quality." KWMJ responded on February 20, 1996, with a letter to Donrey advising it that the signal strength data submitted by Donrey had been evaluated by the station's Chief Engineer who believed that the station could supply the necessary equipment to improve its signal sufficiently at Donrey's headend to qualify for mandatory signal carriage, and that "KWMJ is prepared to provide the necessary equipment to accomplish this goal." This letter was followed on March 1, 1996 by another to Donrey from

KWMJ's attorney stating that the station had retained ". . . a local broadcast engineer with considerable experience regarding signal strength and must-carry issues, to work with your engineering staff to ensure that the station delivers a signal of requisite quality . . ." and that this engineer would be in contact with the system soon. The attorney also advised the system that, because the station did commit to the installation of any equipment necessary in order to deliver a good quality signal and did agree to be responsible for the costs of doing so, it is entitled to mandatory carriage on the system, pursuant to the Commission's rules, citing 47 U.S.C. §534(h)(1)(B)(iii), and *In re: Complaint against Cablevision Systems Corporation*, 11 FCC Rcd 2362, 2367 (1996). Thereafter, on March 6, 1996, KWMJ sent Donrey another letter stating that the station had ". . . ordered a high gain antenna and preamplifier to deliver the appropriate signal strength to your head-end terminal equipment. As soon as this arrives it will be shipped to your Bartlesville location."

### DISCUSSION

3. Section 76.55(e) of the Commission's Rules, specifies that 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. §76.56(b). KWMJ is in the Tulsa, Oklahoma ADI, in which Washington County is also located. Thus, KWMJ is entitled to demand mandatory carriage on the cable systems serving the communities of Dewey and Bartlesville, because they are both located in Washington County. One exception to the carriage requirement is that a cable operator need not afford must-carry status to an otherwise qualified local commercial station if the station fails to provide a good quality signal to the system's principle headend. We find that KWMJ has satisfied the criteria for carriage by committing to install the equipment necessary to deliver a good quality signal to Donrey's 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."<sup>1</sup> In this instance, KWMJ has agreed to be responsible for installing all specialized equipment necessary to deliver a good quality signal to Donrey's headend. Donrey cannot, therefore, deny the station carriage on the premise that the Commission's signal quality standards have not been met.<sup>2</sup>

### ORDERING CLAUSES

4. Accordingly, IT IS ORDERED, That the "Complaint" (CSR-4715-M), filed April 8, 1996, by University Broadcasting Company, licensee of Television Broadcast Station KWMJ (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).

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<sup>1</sup> 47 U.S.C. §534(h)(1)(B)(iii).

<sup>2</sup> We expect that Donrey will cooperate with KWMJ's efforts to provide a good quality signal to the system's headend.

5. 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*.

6. 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 Donrey Cablevision's headend.

7. 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  
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