

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

In the Matter of:)
)
) CSR-5050-M
Complaint of KHSC-TV,)
Channel 46, Ontario, California)
)
v.)
)
TCI Cablevision of California, Inc.)
Ventura, California)
)
Request for Mandatory Carriage)
)

MEMORANDUM OPINION AND ORDER

Adopted: December 15, 1997

Released: December 17, 1997

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

I. INTRODUCTION

1. SKLA Broadcasting Partnership, licensee of independent television broadcast station KHSC-TV, Channel 46, Ontario, California ("KHSC") has filed with the Commission a petition requesting mandatory carriage of its signal on the cable systems operated by TCI Cablevision of California, Inc., Ventura, California ("TCI") in the communities of Ojai, Meiners Oak, and Oak View, California (collectively the "Communities"). TCI filed an opposition to which KHSC replied.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in its *Report and Order in MM Docket 92-259*,¹ commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market. A station's market for this purpose is its "area of dominant influence," or ADI, as defined by the Arbitron audience research organization.²

¹8 FCC Rcd 2965, 2976-2977 (1993).

²Section 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) of the Commission's Rules provides that the ADIs to be used for purposes of the initial implementation of the mandatory carriage rules are those published in Arbitron's 1991-1992 *Television Market Guide*.

III. SUMMARY OF PLEADINGS

3. In its petition, KHSC states that its city of license and the cable communities at issue are all located within the Los Angeles ADI. KHSC further states that on August 27, 1996, it informed TCI of KHSC's election of mandatory carriage on TCI's cable systems serving the Communities. KHSC further states that on May 1, 1997, it sent a second request for mandatory carriage to TCI to which TCI replied. In TCI's response dated May 8, 1997, it agreed to carry KHSC on several of TCI's cable systems serving Ventura and Los Angeles Counties but refused to carry the television station on its systems serving the Communities because KHSC failed to provide a good quality signal to TCI's principal headend in the community of Ojai. In a separate letter dated May 23, 1997, TCI sent copies of its signal strength tests to KHSC. KHSC maintains that, pursuant to Section 76.55(c)(3) of the Commission's rules,³ it is willing to purchase and install any equipment necessary to boost its signal to TCI's principal headend. KHSC argues that, because it is willing to be responsible for the costs of delivering a good quality signal to TCI, TCI has no grounds to deny KHSC mandatory carriage.

4. In opposition, TCI argues that KHSC's petition is procedurally defective because it is untimely. TCI maintains that, pursuant to Section 76.7(c)(4)(iii) of the Commission's rules, KHSC should have filed its petition within 60 days of May 8, 1997, the date of TCI's initial response in which it refused to carry the station on its systems serving the Communities. According to TCI's calculations, KHSC's petition should have been filed on or before July 7, 1997 rather than on July 22, 1997, the actual date of filing. TCI further maintains that the letter dated May 8, 1997 is the event which triggered the complaint period within which KHSC could file a timely petition. TCI states that KHSC mistakenly calculated the complaint period from the date KHSC received TCI's May 23 letter containing the signal test results. In the alternative, TCI argues that even if KHSC's petition is timely, KHSC has not denied that it fails to provide a good quality signal to TCI's principal headend.

5. In reply, KHSC argues that TCI's procedural argument is without merit because the Commission requires that a signal deficiency notification from a cable operator to a television station include detailed information regarding reception and over-the-air signal processing equipment used and a description of the methodology used by the operator for processing the signal at issue.⁴ KHSC argues that TCI's May 8 letter did not comply with Commission requirements and that TCI's May 23 letter, which included the required information, properly serves as the event triggering the complaint period. Further, KHSC points out that TCI does not address KHSC's offer to provide, at its own expense, any equipment needed to boost KHSC's signal in order to provide a good quality signal to TCI's principal headend. KHSC argues that TCI has failed to provide any legitimate justification for its refusal to carry KHSC on TCI's cable systems serving the Communities.

IV. DISCUSSION

6. We will grant KHSC's request for mandatory carriage on TCI's cable systems serving the Communities. The Commission has stated that a cable operator, when notifying a television station of

³47 C.F.R. § 76.55(c)(3).

⁴Reply at 2 citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues, Broadcast Signal Carriage Issues*, 8 FCC Rcd 4142, 4143 (1993) ("Clarification Order").

signal deficiency, must provide a detailed description of the reception and over-the-air signal processing equipment used, including sketches and a description of the methodology used by the operator for processing the signal at issue.⁵ TCI's May 8 letter stated that KHSC's signal was of poor quality but did not include the required information with regard to TCI's testing methods. Pursuant to Commission rules, TCI's May 8 letter was insufficient to act as a signal deficiency notification letter. TCI provided the required information in its May 23 letter. Section 76.7(c)(4)(iii) of the Commission's rules⁶ provides that must-carry complaints must be filed within 60 days of certain specified events. In this case, we find that TCI's May 23 letter containing the required signal deficiency information was the event which triggered the complaint period under Section 76.7(c)(4)(iii). KHSC filed its petition on June 22, thus we further find that KHSC's petition was timely.

7. We further find persuasive KHSC's argument that it offered to purchase and to install, at its own expense, any equipment necessary to deliver a good quality signal. The Commission in the *Clarification Order*,⁷ after re-emphasizing that it was the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend, stated:

This may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with signal strength requirements ...

KHSC, by committing to provide specialized equipment, satisfies its obligation to bear the costs associated with delivering a good quality signal to TCI's principal headend. Accordingly, we order TCI to carry KHSC's signal in the event that KHSC provides a good quality signal employing the specialized equipment it has offered to purchase and to install at TCI's principal headend.

V. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. §534, and Sections 76.55(c)(3) and 76.61(a)(2) of the Commission's rules, 47 C.F.R. §76.55(c)(3) and 47 C.F.R. §76.61(a)(2), the Petition for Special Relief [CSR-5050-M] filed by SKLA Broadcasting Partnership, Inc, KHSC-TV for mandatory carriage of its signal on the cable systems operated by TCI Cablevision of California, Inc. in the communities of Ojai, Meiners Oak, and Oak View, California **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that TCI shall commence carriage of KHSC-TV on its cable system serving the Communities sixty (60) days from the date that KHSC-TV provides a good quality signal to TCI's principal headend. KHSC-TV shall notify TCI in writing of its carriage and

⁵*Id.* see also 47 C.F.R. § 76.61(a)(2).

⁶47 C.F.R. §76.7(c)(4)(iii).

⁷*Clarification Order*, 8 FCC Rcd at 4143.

channel position elections pursuant to Sections 76.56, 76.57 and 76.64(f) of the Commission's rules, 47 C.F.R. §§76.56, 76.57, and 76.64(f), within thirty (30) days of providing a good quality signal.

10. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules, 47 C.F.R. §0.321.

FEDERAL COMMUNICATIONS COMMISSION

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