

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

In re:)	
)	
Complaint of San Mateo Community)	CSR-5038-M
College District against Century)	
Communications)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 1997

Released: December 19, 1997

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

INTRODUCTION

1. San Mateo Community College District, licensee of Station KCSM-TV (Educ., Ch. 60), San Mateo, California, filed a must carry complaint against Century Communications, operator of a cable system serving Rohnert Park, Sonoma, Sebastopol, Cotati, California and surrounding areas, for Century's failure to carry its signal as required by §615 of the Communications Act of 1934, as amended.¹ An opposition to this petition was filed on behalf of Century. No reply was received.

SUMMARY OF PLEADINGS

2. In support of its petition, KCSM-TV argues that it is a "qualified noncommercial educational television station" pursuant to §615(1)(2)(B) of the Communications Act, as its Grade B service contour encompasses Century's principal headend which is located at Sonoma Mountain, California. KCSM-TV states that it requested carriage on Century's system by letter dated June 28, 1996. According to KCSM-TV Century denied this request on July 26, 1996, indicating that KCSM-TV's signal did not meet the minimum signal quality criteria. Subsequently, on April 30, 1997, KCSM-TV states that it informed Century that its transmitter had been retrofitted and adjusted by the manufacturer and it would now be able to provide a good quality signal to Century's principal headend. To date, however, KCSM-TV states that Century has neither responded to this request nor commenced carriage of its signal. KCSM-TV requests, therefore, that the Commission order Century to comply with the must carry requirements.

¹47 U.S.C. 535.

3. In opposition, Century states that the communities in which KCSM-TV is currently requesting carriage are served by its Rohnert Park, California cable system.² Century indicates that in a reconsideration of an earlier must carry complaint filed by KCSM-TV³ the Commission found, after the review of signal quality tests submitted by the cable system, that KCSM-TV was not entitled to must carry status on the Rohnert Park cable system, serving Sonoma, Sebastopol, Cotati and surrounding areas, as its signal did not meet the minimum signal quality levels mandated by the Commission. In the instant complaint, Century argues that, apparently, KCSM-TV is attempting to reargue this earlier case by asserting that changes to its transmitter now make it eligible for carriage. However, Century maintains that KCSM-TV still does not provide a good quality signal as required by the rules and, in support, submits copies of recent signal strength tests which it performed at its Sonoma Mountain headend site on July 24 and 25, 1997. As a result, Century states that KCSM-TV is not entitled to must carry status on its Rohnert Park system and KCSM-TV's complaint should be denied. In addition, Century asks that the Commission direct KCSM-TV to refrain from making any further must carry requests or filing petitions with the Commission until such time as it actually provides a good quality signal to the cable system herein.

DISCUSSION

4. It is uncontested that KCSM-TV's Grade B contour encompasses the principal headend of Century's Rohnert Park cable system located at Sonoma Mountain, thus making it eligible to be considered a must carry station for that system. The only contested issue is whether KCSM-TV delivers a signal that meets the statutory requirements at Century's principal headend and thus qualifies as a local station entitled to must-carry rights on Century's cable system. The measurements provided by Century purport to show that KCSM-TV's signal level at the Sonoma Mountain headend fails to meet those requirements. However, the information provided by Century on the method of calibration used does not demonstrate conformance with good engineering practices. Moreover, the age of the equipment used was not provided. Therefore, we cannot conclude that KCSM-TV's signal fails to meet the signal quality criteria with respect to Century's Rohnert Park cable system. In addition, despite Century's assertions, we find no record of harassment in KCSM-TV's filing of must carry complaints against Century's Rohnert Park cable system in 1993 and again in 1997, nor do we find its most recent complaint an attempt to reargue the earlier decision. The Commission stated in its *Clarification Order in MM Docket No. 92-259*,⁴ that ". . . broadcast stations may assert their carriage and channel positioning rights at any time so long as they have not elected retransmission consent. In particular, we note that a broadcast station's ability to deliver a good quality signal may depend on factors that it cannot control Therefore, a time limit on the exercise of must-carry rights is not only contrary to the 1992 Act and our rules, but is unrealistic." Moreover, it was stated further in the *Clarification*, that ". . . where the station does not initially meet the

²Century states in its opposition that KCSM-TV filed two separate complaints -- one referencing the Rohnert Park system as described herein and one for its Fairfield, California cable system -- and it filed a consolidated opposition to both complaints. However, our records reflect the receipt of only one complaint on behalf of KCSM-TV, that involving the Rohnert Park cable system. Therefore, our summary of Century's opposition and subsequent discussion will not include any reference to the Fairfield cable system.

³See *Complaints of San Mateo County Community College District against MultiVision Cable TV Corp.*, 9 FCC Rcd 2300 (1994).

⁴8 FCC Rcd 4142 (1993).

criteria for must-carry status, it subsequently may assert its rights once it satisfies the conditions for must-carry status." Both KCSM-TV's most recent must carry request to Century and its subsequent complaint to the Commission appear to be legitimate results of the changes the station apparently made in its transmitter in order to deliver a good quality signal. Therefore, in view of the fact that KCSM-TV has stated that it can deliver a good quality signal to Century's principal headend, we will grant KCSM-TV's complaint.

ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition filed June 26, 1997, by San Mateo Community College District **IS GRANTED** pursuant to §615 of the Communications Act of 1934, as amended and Century Communications **IS ORDERED** to commence carriage of Station KCSM-TV within sixty (60) days of the release date of this Order, unless Century submits, within 15 days, an engineering study in conformance with Commission criteria which substantiates its claim of poor signal quality.

6. 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