

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

In re:)	
)	
Comcast Cablevision of Inland Valley, Inc.)	CSR-4911-A
)	
For Modification of the ADI of Television Broadcast Station KHIZ, Barstow, California)	
)	
Complaint of Sunbelt Television, Inc. against Comcast Cablevision of Inland Valley, Inc.)	CSR-4861-M
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: April 29, 1997

Released: May 2, 1997

By the Deputy Chief, Cable Services Bureau:

INTRODUCTION

1. Comcast Cablevision of Inland Valley, Inc. ("Comcast"), filed the above-captioned petition for special relief seeking to modify the Los Angeles, California Area of Dominant Influence (ADI) relative to television broadcast station KHIZ (Ch. 64), Barstow, California. Specifically, Comcast requests that KHIZ be excluded, for purposes of the cable television mandatory broadcast signal carriage rules, from its cable systems serving Loma Linda City, Rancho Cucamonga City, Highland City, Grand Terrace City, Fontana City, Ontario City, San Bernardino City, Upland City, Montclair City and unincorporated areas of San Bernardino County, California. KHIZ filed an opposition to this petition to which Comcast replied. In a separate but related proceeding, KHIZ filed a must carry complaint against Comcast for carriage on Comcast's San Bernardino County systems. We will jointly consider these cases to resolve the signal carriage rights of KHIZ on Comcast's cable systems.

BACKGROUND

2. Pursuant to §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 An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.³

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as -

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides new coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

¹8 FCC Rcd 2965, 2976-2977 (1993).

²Section 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*.

³Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, see Arbitron's *Description of Methodology*.

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

4. The legislative history of this provision indicates that:

where the presumption in favor of ADI carriage would result in cable subscribers losing access to local stations because they are outside the ADI in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the areas in which they serve and which form their economic market.

* * * *

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁴

5. The Commission provided guidance in its *Report and Order in Docket 92-259, supra*, to aid decision making in these matters, as follows:

For example, the historical carriage of the station could be illustrated by the submission of documents listing the cable system's channel line-up (*e.g.*, rate cards) for a period of years. To show that the station provides coverage or other local service to the cable community (factor 2), parties may demonstrate that the station places at least a Grade B coverage contour over the cable community or is located close to the community in terms of mileage. Coverage of news or other programming of interest to the community could be demonstrated by program logs or other descriptions of local program offerings. The final factor concerns viewing patterns in the cable community in cable *and* noncable homes. Audience data clearly provide appropriate evidence about this factor. In this regard, we note that surveys such as those used to demonstrate significantly viewed status could be useful. However, since this factor requires us to evaluate viewing on a community basis for cable and noncable homes, and significantly viewed surveys typically measure viewing only in noncable households, such surveys may need to be supplemented with additional data concerning viewing in cable homes.⁵

⁴H.R. Rep. 102-628, 102d Cong., 2d Sess 97 (1992).

⁵8 FCC Rcd at 2977 (emphasis in original).

6. As for deletions of communities from a station's market, the legislative history of this provision indicates that:

The provisions of [this subsection] reflect a recognition that the Commission may conclude that a community within a station's ADI may be so far removed from the station that it cannot be deemed part of the station's market. It is not the Committee's intention that these provisions be used by cable systems to manipulate their carriage obligations to avoid compliance with the objectives of this section. Further, this section is not intended to permit a cable system to discriminate among several stations licensed to the same community. Unless a cable system can point to particularized evidence that its community is not part of one station's market, it should not be permitted to single out individual stations serving the same area and request that the cable system's community be deleted from the station's television market.⁶

7. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁷ The rules further provide, in accordance with the requirements of the 1992 Cable Act, that a station not be deleted from carriage during the pendency of an ADI change request.⁸

MODIFICATION ARGUMENTS

8. The communities here in question are located in San Bernardino County, California and are part of the Los Angeles, California ADI. Barstow, California, the city of license of KHIZ, is also a part of the same ADI.

9. In support of its petition, Comcast states that its systems are located in the Inland Valley region of the Los Angeles ADI while KHIZ's city of license is located in what is known as the "High Desert" region. Comcast states that these two regions are separated by the San Bernardino mountains which rise to an elevation of over 6,000 feet. Comcast maintains that due to this separation KHIZ has never been able to deliver an adequate over-the-air signal to its systems⁹ and, therefore, has never been carried, despite being on-the-air since 1987.¹⁰ Moreover,

⁶H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

⁷8 FCC Rcd at 1977 n. 139.

⁸47 C.F.R. §76.59.

⁹Comcast points out that KHIZ concedes the inadequacy of its signal in its companion must carry complaint herein. The issues relating to the delivery of its signal are discussed more fully in that complaint.

Comcast continues that since KHIZ, out of necessity, focuses its limited coverage of local events on the "High Desert" region, it provides no local programming relevant to residents in San Bernardino County.¹¹ Indeed, Comcast states that KHIZ's only regularly-listed public affairs program is a weekly, half-hour show entitled "High Desert Magazine." Comcast avers that this clearly indicates that KHIZ is aware that its market does not extend beyond the "High Desert" region. Comcast argues that it is also doubtful that any local businesses within its cable communities would find KHIZ attractive as an advertising outlet, particularly when the systems currently carry four stations licensed to system communities which have a closer nexus to the region.¹² Comcast states that these stations have an off-air presence in the communities herein, and along with its systems' local origination channels, provide a significant amount of local news and events coverage of interest to its subscribers.¹³ Comcast argues further that in addition to the natural barrier between the two regions, the station is geographically distant from the communities herein, with San Bernardino, the nearest cable community, approximately 69 miles from KHIZ's city of license and Ontario, one of the most distant communities at least 82 miles away. Finally, Comcast avers that KHIZ has no appreciable audience in the Los Angeles market and does not garner sufficient viewership to be reported in the 1996 *Nielsen Station Index*. Comcast states in addition that KHIZ is not listed in either local area papers or the Los Angeles edition of *TV Guide*. Comcast concludes that grant of its modification request, therefore, would be consistent with Commission decisions in other similar requests.¹⁴

10. In its opposition, KHIZ states that because it has determined that it is able to provide a good quality signal to Comcast's headends, as required by §76.55(c)(3) of the rules,¹⁵ the filing of Comcast's modification request is clearly an attempt to avoid its must carry obligations and should be rejected. It argues that since §76.55(e)(3) defines a station's market as not only its ADI, but the county in which it is located and since Comcast's cable systems and KHIZ's city of license are all located within San Bernardino County, even if Comcast's request to delete its communities "from the ADI of KHIZ" was granted it would still be required to carry

¹⁰Comcast states that no station licensed to a community in the "High Desert" area has ever established a history of carriage on any Inland Valley cable system.

¹¹Comcast states for instance that KHIZ does not produce a daily half-hour news program and the vast majority of its programming is syndicated national programming with no particular relevance to Comcast subscribers.

¹²These stations are KSCI (Ind.), KZKI (Ind.), KVCR-TV (PBS), all San Bernardino, California, and KHSC (Ind.), Ontario, California.

¹³Comcast indicates, for example, that KSCI carries a weekly show entitled "Inland Empire Alive; while KZKI carries a daily news program entitled "Inland Empire TV News." In addition, its local origination programming includes City Council meetings, coverage of local sports and local news magazines, among others.

¹⁴See, e.g., *Time Warner Cable*, DA 96-1694 (released October 15, 1996); *A-R Cable Services, Inc.*, DA 96-2015 (released December 5, 1996); and *Cablevision of Cleveland, L.P.*, DA 96-867 (released June 3, 1996).

¹⁵KHIZ states that this is through the establishment of a television relay system and a microwave system on Paivika Peak.

KHIZ since the station is still part of Comcast's defined "market." In any event, KHIZ states that it provides coverage and local service to Comcast's communities. KHIZ points out that Comcast's Ontario headend is only 43.78 miles from the station's transmitter site at Victorville, California, while the system's Grand Terrace headend is only 39.87 miles away. Moreover, KHIZ points out that the communities of Fontana, San Bernardino, Loma Linda, Rancho Cucamonga, Grand Terrace and Highland all fall within KHIZ's predicted Grade A contour and the communities of Montclair, Ontario and Upland fall within the station's predicted Grade B contour. KHIZ asserts that the Commission has stated that "Grade B service demonstrates service to cable communities and serves as a measure of a station's natural economic market."¹⁶ KHIZ argues that the San Gabriel Mountains¹⁷ do not pose either a geographic or economic "barrier" and therefore are no basis for exclusion. KHIZ maintains that the Inland Valley and "High Desert" regions are connected by interstate highways, that both the communities of Victorville and Barstow are considered to be part of the "Inland Empire,"¹⁸ numerous radio stations serve both regions, "High Desert" residents make principal use of Riverside and San Bernardino newspapers, are dependent on those same areas for jobs and up to 98,000 motorists travel between the two regions daily.

11. With regard to historical carriage, KHIZ argues that the Commission has previously stated that the fact that a station has not been carried is not determinative and the 1992 Cable Act was designed to remedy past discriminatory signal practices. In any event, KHIZ avers that its lack of carriage should not be construed as due to the station's location, but rather simply due to the fact that, until recently, it could not technically provide an adequate over-the-air signal. Further, KHIZ argues that Comcast does not provide any evidence to support its claim that KHIZ does not provide a off-air signal. However, KHIZ points to evidence submitted in an associated modification petition¹⁹ which indicates that its signal does indeed have off-air viewership in Comcast's community market area. While KHIZ admits that this viewership is not large, it maintains that it was not Congress' intention to delete stations from their home markets solely because of low viewership. In addition, KHIZ avers that any weight that can be attributed to Comcast's carriage of other local stations is minimal since KHIZ is providing service to the system communities as evidenced by coverage of its Grade A and Grade B contours and the programming that it provides which is responsive to the needs and interests of residents

¹⁶See, *Rifkin/Narragansett South Florida, CATV Limited Partnership*, DA 96-2016 (released December 5, 1996) at n. 59.

¹⁷KHIZ indicates that Comcast mistakenly identifies them as the San Bernardino mountains.

¹⁸KHIZ states that according to Ronald Rector, General Manager of the High Desert Regional Economic Development Authority, the "High Desert" corridor, consisting of Apple Valley, Hesperia, Victorville, Adelanto and Barstow, is considered part of the "Inland Empire" which also includes the instant communities.

¹⁹See Attachment 7 of the "Petition for Special Relief" filed on behalf of Marks Cablevision and TCI Cablevision of California, Inc. (CSR-4884-A) in which Howard Rosenblum, President of Media Strategies states that "KHIZ accounts for less than 1% of the viewing to [San Bernardino County] households."

throughout San Bernardino County.²⁰

12. Comcast argues in reply that KHIZ ignores the relevant geography of the Los Angeles market, factors such as its station's poor signal quality and the fact that the Communications Act clearly allows the Commission the ability to grant ADI modifications which exclude communities located in the same county as a station where the circumstances indicate that station is not truly "local".²¹ In any event, Comcast states that it is not merely requesting deletion of its systems from KHIZ's ADI, but also modification of KHIZ's market. Comcast states that KHIZ's reliance on the "home county" exception, therefore, is not absolute and represents nothing more than a presumption that communities located within the same county as a television station are also located within that station's economic market. Comcast argues that while this is one factor that the Commission considers in making a market modification determination, it is not determinative, particularly where, as here, all four factors support exclusion. Moreover, KHIZ's claim that its past failure to provide an adequate signal does not "reflect a judgment as to the geography of the market involved" is misplaced. Comcast argues that neither cable operators nor subscribers are likely to consider a station local when they cannot receive its signal off-the-air. In addition, Comcast continues that while KHIZ provides evidence of its programming being relevant to San Bernardino County in general, it shows no programming which is targeted specifically to Comcast's communities. Moreover, Comcast adds that while KHIZ questions the claim that Comcast's subscribers are unable to receive its signal, it does not question the evidence that, apparently, none of Comcast's viewers watch KHIZ.²² Finally, Comcast argues that KHIZ's exhaustive efforts to explain the interest of "High Desert" residents in the Inland Valley region are decidedly one-sided as it fails to explain why coverage of events in the "High Desert" region would be of interest to the residents of Inland Valley.

MUST CARRY ARGUMENTS

13. In its must carry complaint, KHIZ states that it initially requested carriage on Comcast's systems in letters of November 1995 and January 1996, but that KHIZ withdrew its requests in April 1996, after it was determined that KHIZ did not at that time provide a good quality off-air signal to the systems' headends. On September 28, 1996, KHIZ states that it

²⁰KHIZ states that it covers stories that affect the entire County such as: a train derailment in Cajon Pass; a discussion of child abuse with the San Bernardino County Sheriff's Office; complete County election returns; and the San Bernardino County Fair, among others.

²¹Comcast states for instance that if this were not so, particularly in a county such as San Bernardino which is approximately 51,961 square kilometers, the Commission would lack the authority to exclude the carriage of a TV station in Needles, California from carriage in Ontario, California, even though the two communities are approximately 230 miles apart and have little, if anything, in common.

²²Comcast states that on February 18 and 19, 1997, it conducted signal strength surveys of KHIZ at its Blue Mountain and Ontario headends over a two-hour period and found readings of -73.55 dBm and -83-15 dBm, respectively, which fall far below the level that can achieve must carry status and indicate a signal too weak for off-air viewing.

renewed its carriage requests in letters which Comcast received on October 3, 1996. Subsequently, on October 16, 1996, KHIZ states that it supplemented its letters to detail the station's planned signal delivery system. Although Comcast was required to respond by November 2, 1996, KHIZ states that Comcast failed to do so. KHIZ filed the instant complaint on November 6, 1996.

14. In support of its request, KHIZ states that it is a qualified local commercial television station with respect to Comcast. KHIZ notes that the communities in question are all located in the Los Angeles ADI, of which Barstow, California -- KHIZ's city of license -- is a part. KHIZ further notes that it is not considered a distant signal under the cable compulsory license with respect to Comcast, and states that it is able to provide a good quality signal to Comcast. KHIZ states that Comcast's Loma Linda/San Bernardino system has 62 activated channels, but that the system is only carrying 14 qualified local commercial television stations. KHIZ further states that the Ontario system has 57 activated channels, but is also carrying only 14 activated channels. Because the Loma Linda/San Bernardino system is required to carry up to 21 qualified local commercial television stations, and the Ontario system is required to carry up to 19 such stations, KHIZ argues that Comcast is required to carry the station. KHIZ states that it is capable of providing Comcast with a good quality signal by means of a microwave relay from KHIZ's main transmitter in Victorville, California to an existing tower site on Paivika Peak, from which the station's signal will be fed to Comcast's principal headends. KHIZ is willing to bear the cost of acquiring and installing the necessary equipment to implement this signal delivery system. KHIZ also states that it has timely asserted its must-carry rights, citing the Commission's *Clarification Order*.²³

15. In opposition to KHIZ, Comcast argues that KHIZ has yet to deliver an adequate signal to Comcast's headends. Comcast notes that tests conducted from February 27, 1996 through September or October 1996 consistently demonstrated that KHIZ failed to deliver an adequate signal. Comcast states that it is not aware of any subsequent tests conducted utilizing a microwave relay path, nor has KHIZ contacted Comcast to arrange for access to Comcast's headend sites to conduct such a test, which is the only way for KHIZ to obtain access to those sites. Comcast further states that on November 15, 1996 Comcast tested KHIZ's signal strength and found it to be -81.0 dBm at Comcast's Blue Mountain headend and -81.5 dBm at Comcast's Brooks Street headend, in each case well short of the statutory minimum strength of -45 dBm. Comcast contends that KHIZ has not addressed any of the logistical issues involved in placing any necessary signal reception equipment at Comcast's sites, nor has KHIZ demonstrated that it has the requisite microwave licenses to operate its system.

16. In reply to Comcast, KHIZ claims that Comcast, having failed to respond to KHIZ's carriage requests, should not now be heard to raise objections.²⁴ KHIZ states that it has

²³8 FCC Red 4142, 4144 (1993).

²⁴KHIZ cites the *Must Carry Order* at 2994.

offered to install, at its own expense, the equipment necessary to deliver a good quality signal to Comcast, and that Comcast has failed to demonstrate that installation of this equipment would place an extraordinary burden on Comcast or that Comcast's existing towers lack room for this equipment. Accordingly, KHIZ argues that it is entitled to a Commission order requiring Comcast to commence carriage of the station once KHIZ installs and activates the necessary equipment to provide a good quality signal.²⁵

DISCUSSION

17. We are not persuaded by the arguments raised by Comcast herein. With regard to the first criteria which deals with historic carriage on a cable system, we note that Section 614 of the Communications Act of 1934, as amended, was adopted in part to cure past discriminatory signal carriage practices.²⁶ Where, as is the case here, a petitioner seeks to delete a station from a relevant ADI with respect to a cable system, we believe that failure to establish historic carriage should not, by itself, be given determinative weight. KHIZ's lack of carriage, specialty station type programming format, and its previous inability to provide a viewable signal explain why its ratings are low in the relevant cable communities.²⁷ Congress could not have intended for stations to have cable communities deleted from their markets solely because their audience shares are not as significant as those of several other stations with which they compete.

18. Although the factors recited by Comcast do weigh in favor of their request, we find that other factors deserve more weight. KHIZ's transmitter is located, on average, only 33 miles from the systems' headends and its predicted Grade A contour encompasses all but one of the communities. While the San Bernardino and San Gabriel Mountains are between KHIZ and the cable systems in question, it does not appear from the evidence herein, including in particular the distances involved, that they present a market barrier. The evidence before us indicate that there are significant cultural and economic connections between KHIZ and the San Bernardino-Riverside area. With respect to KHIZ's status as a home shopping station, we note that the Commission has found that such stations qualify as local commercial television stations for purposes of cable carriage.²⁸ Consequently, based upon the above, we find that Comcast has failed to carry its burden of establishing that the public interest would be served by deleting KHIZ from the Los Angeles ADI as it relates to carriage on Comcast's cable systems.

19. Turning to KHIZ's signal carriage complaint, having found that grant of Comcast's petition for market modification is not warranted, we find no issue remaining. Although it is

²⁵KHIZ cites *KSLS, Inc.*, 11 FCC Rcd 12718 (1996).

²⁶47 U.S.C. §614.

²⁷A.C. Nielsen indicates a 0% share of total viewing hours and a 6% net weekly circulation for KHIZ in San Bernardino County, while in Riverside County, no shares were reported.

²⁸*Report and Order in MM Docket No. 93-8*, 8 FCC Rcd 5321 (1993).

undisputed that KHIZ does not yet provide a sufficient off-air signal to Comcast, KHIZ has stated that, using specialized equipment and microwave relay equipment, it can deliver signal strengths well within Commission criteria. KHIZ has stated that it will provide, at its own expense, the necessary specialized equipment to ensure a good quality signal. We find, therefore, that KHIZ is a qualified UHF station entitled to carriage on Comcast's systems serving the communities in question.

ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED**, pursuant to §614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534, and §76.59 of the Commission's Rules, 47 C.F.R. §76.59, that the petition for special relief (CSR-4911-A) filed on behalf of Comcast Cablevision of Inland Valley, Inc. **IS DENIED**.

21. **IT IS FURTHER ORDERED**, that the complaint filed on behalf of KHIZ (CSR-4861-M) against Comcast's systems **IS GRANTED**. Comcast Cablevision of Inland Valley, Inc. **IS ORDERED** to commence carriage of KHIZ sixty (60) days after KHIZ installs the equipment necessary to provide a good quality signal to Comcast's principal headends. KHIZ 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 providing a good quality signal.

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

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau