

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

)	
Complaint of)	CSR-4886-M
Quincy Jones Broadcasting, Inc.)	
against)	
Charter Communications, L.P.)	
)	
)	
Request for Mandatory Carriage)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 8, 1997

Released: May 12, 1997

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

INTRODUCTION

1. Quincy Jones Broadcasting, Inc. ("Quincy"), licensee of WNOL(TV), New Orleans, Louisiana, Channel 38 ("WNOL") has filed a request for mandatory carriage of its signal on the cable system operated by Charter Communications, L.P. ("Charter") in the communities of Amite City, Bogalusa,¹ Franklinton,² Folsom, Hammond,³ Independence, Pearl River (NW), Ponchatoula, Roseland, St. Tammany,⁴ Sun, Tangipahoa,⁵ and Tickfaw, Louisiana (collectively, the "Communities"). Charter did not file a response.

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*,⁶ commercial

¹Quincy identified two community unit identifiers ("CUIDs") for the city of Bogalusa, CUID LA 0056 and CUID LA 0116.

²Quincy identified two CUIDs for the city of Franklinton, CUID LA 0115 and CUID LA 0057.

³Quincy identified two CUIDs for the city of Hammond, CUID LA 0058 and CUID LA 0395.

⁴Quincy identified two CUIDs for the city of St. Tammany, CUID LA 0467 and CUID LA 0559.

⁵Quincy identified two CUIDs for the city of Tangipahoa, CUID LA 0553 and CUID LA 0065.

⁶8 FCC Rcd 2965, 2972-74 (1993).

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.⁷ 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.⁸

3. A commercial television station serving a community of license that is located within the same ADI as the principal headend of a cable system has a right of carriage on that cable system.⁹ However, this right is subject to several conditions: 1) a cable system operator is generally required to devote no more than one-third of its activated channel capacity in order to comply with the mandatory signal carriage obligations;¹⁰ 2) the station is responsible for delivering a good quality signal to the principal headend of the system;¹¹ 3) indemnification may be required for any increase in copyright liability resulting from carriage;¹² and 4) the system operator is not required to carry the signal of any station whose signal substantially duplicates the signal of any other local signal carried or the signals of more than one local station affiliated with a particular broadcast network.¹³ If, pursuant to these requirements, a system operator elects to carry the signal of only a single affiliate of a broadcast network, it is obliged to carry the affiliate from within the market whose city of license is closest to the principal headend of the cable system.¹⁴

⁷Section 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*.

⁸Because 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*.

⁹See 47 U.S.C. § 534(h)(1)(A). See also 47 C.F.R. § 76.56(b).

¹⁰See 47 U.S.C. § 534(b)(1)(B).

¹¹See 47 U.S.C. § 534(h)(1)(B)(iii).

¹²See 47 U.S.C. § 534(h)(1)(B)(ii).

¹³See 47 U.S.C. § 534(b)(5).

¹⁴8 FCC Rcd at 2981.

SUMMARY OF PLEADINGS

4. WNOL first notes that it is assigned to the New Orleans ADI, the same television market served by Charter's cable systems. WNOL then states that, on September 27, 1996, it notified Charter of WNOL's election of must-carry status on Charter's cable systems serving the Communities.¹⁵ WNOL further states that, on November 21, 1996, it sent a second request for mandatory carriage to Charter. WNOL asserts that Charter failed to respond to WNOL's repeated attempts to seek mandatory carriage in violation of Section 76.61(a)(2) of the Commission's rules.¹⁶ WNOL alleges that, in further violation of the Commission's rules, Charter has not commenced carriage of WNOL's signal in the communities at issue.

DISCUSSION

5. We will grant WNOL's carriage complaint against Charter. Section 614(a) of the Act states that each cable operator shall carry the signals of local commercial television stations. A local commercial television station is defined as any full power broadcast television station that is within the same television market as the cable system.¹⁷ It is undisputed that WNOL and Charter are located in the same ADI. A cable operator is required to carry the signals of a local commercial station unless that station fails to deliver a good quality signal to the cable system's principal headend; the station's signal substantially duplicates the signal of another local commercial station which is carried on the system; or the cable operator (with a system of more than 12 usable activated channels) has already allocated up to one-third of the aggregate number of its usable activated channels to other local commercial stations.¹⁸ Commission rules also require a local commercial station that believes that a cable operator has failed to meet its carriage obligations to complain in writing to the operator.¹⁹ The cable operator must respond in writing to the station's complaint within 30 days of receipt. The operator must either commence carriage of the signal, or explain its reasons for failing to do so.²⁰ If the Commission determines that a cable operator has failed to meet its must-carry obligations, it may order an operator to commence carriage of a station. In this case, Charter failed to respond within 30 days

¹⁵Petition at 2.

¹⁶47 C.F.R. § 76.61(a)(2).

¹⁷See 47 U.S.C. § 534(h)(1)(A).

¹⁸See *Clarification Order*, 8 FCC Rcd 4142 (1993). See also 47 U.S.C. §§ 534(b)(5) and (b)(1)(B).

¹⁹47 C.F.R. § 76.61(a)(1).

²⁰47 C.F.R. § 76.61(a)(2). If a refusal for carriage is based on the station's distance from the cable system's principal headend, the operator's response shall include the location of such headend. If a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to make the measurements, the point of measurement and a list of the reception and over-the-air signal processing equipment used. *Id.*

to WNOL's letters requesting carriage, as is required by Commission rules. Consequently, we will order Charter to carry WNOL.

ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that, pursuant to § 614 of the Communications Act of 1934, as amended, 47 U.S.C. 534, and § 76.61(a)(2), 47 C.F.R. § 76.61(a)(2) of the Commission's rules, the Petition for Special Relief (CSR-4886-M) filed by Quincy Jones Broadcasting, Inc. IS GRANTED.

7. IT IS FURTHER ORDERED that Charter Communications, L.P. SHALL COMMENCE CARRIAGE of the signal WNOL(TV) within sixty (60) days from the release date of this Order on its cable system serving Amite City, Bogalusa, Franklinton, Folsom, Hammond, Independence, Pearl River (NW), Ponchatoula, Roseland, St. Tammany, Sun, Tangipahoa, and Tickfaw, Louisiana.

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

FEDERAL COMMUNICATIONS COMMISSION

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