

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

In the Matter of:)
)
Complaint of Community Educational Television, Inc.) CSR 5319-M
against TCI Cablevision of Texas)
)
for Carriage of KETH-TV, Houston, Texas)

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 1999

Released: March 12, 1999

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

I. INTRODUCTION

1. Community Educational Television, Inc. ("CET"), licensee of KETH-TV, Houston, Texas, filed a petition for special relief pursuant to Sections 76.7 and 76.65(b) of the Commission's rules for an order requiring TCI Cablevision of Texas to carry the signal of KETH-TV on its cable systems serving Houston, Highlands, Springs, Needville, Seadrift, Port O'Connor, and the Woodlands, Texas. TCI TKR of Houston, Inc., Tele-Vue Systems, Inc., TCI Cablevision of Texas, Inc., and TCI Woodlands Ventures, Inc. (collectively "TCI") filed a joint opposition to the petition, and CET filed a reply.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order ("*Must Carry Order*"),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

¹*Must Carry Order*, 8 FCC Rcd 2965, 2976-2977 (1993).

organization.² An ADI is a geographic market designation that defines each television market exclusive of others, based on measured viewing.

3. Under the Commission's must-carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.³ One method of doing so is for a cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁴ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under our rules a station may provide a cable operator with specialized equipment, at the station's expense, which will improve the station's signal to an acceptable quality at a cable system's principal headend.⁵

III. ALLEGATIONS OF THE PARTIES

4. The petition states that KETH-TV is a noncommercial educational television broadcast station licensed to Houston, Texas, which is in the Houston ADI as are the communities of Houston, Highlands, Springs, Needville, Seadrift, Port O'Connor, and the Woodlands, Texas served by the TCI systems on which carriage is requested. KETH-TV carries significant blocks of religious programming and apparently does not receive funding from the Corporation for Public Broadcasting. Therefore, KETH-TV is not a "qualified noncommercial educational television station" as defined by Section 615(l)(1) of the Communications Act, but qualifies for must carry rights pursuant to Section 614 as if it were a commercial television station.⁶ Additionally, the petition states that because the station and the communities are located in the same ADI, KETH-TV is considered a local station for copyright purposes under the Satellite Home Viewer Act of 1994, and carriage of KETH-TV in these communities will not

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*. The Commission recently concluded that it was appropriate to switch market definitions from ADIs to Nielsen Media Research's designated market areas ("DMAs") for must-carry/retransmission consent elections. See *Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules, Report and Order and Further Notice of Proposed Rule Making*, CS Docket No. 95-178, 11 FCC Rcd 6201 (1996) ("*Market Modification Report and Order*"). In its *Market Modification Report and Order*, the Commission decided to use Arbitron's 1991-1992 *Television ADI Market Guide* market designations for the 1996 election and postpone the switch to Nielsen's DMAs until the must-carry/retransmission consent election that is to take place on October 1, 1999. The Commission also issued a *Further Notice* in its *Market Modification Report and Order* to solicit additional information and provide parties an opportunity to further consider issues relating to the transition to market designations based on Nielsen's DMAs.

³*Must Carry Order*, 8 FCC Rcd at 2990.

⁴47 C.F.R. §76.55(c)(3).

⁵*Must Carry Order*, 8 FCC Rcd at 2991.

⁶CET petition at 1, n. 1.

increase the copyright liability of TCI. CET has also made a commitment on this record for the station to provide a good quality signal to TCI's principal cable systems' headends of the systems at issue here.⁷

5. TCI provided no information establishing that KETH-TV does not deliver a good quality signal to its cable systems' principal headends. TCI also does not dispute any of the representations made by CET regarding KETH-TV's other must carry qualifications with respect to any of these communities, with the exceptions of Port O'Connor and Seadrift, Texas. TCI states that these two communities are approximately 110 and 120 miles, respectively, from KETH-TV and substantially more distant from the station than the other communities. For that reason TCI argues that KETH-TV cannot provide a good quality signal over the headends of the cable systems serving those communities and requests dismissal of the petition with respect to Port O'Connor and Seadrift. TCI states that KETH-TV is presently being carried on certain portions of its Houston system that have been "rebuilt" and that its options for accommodating the carriage of KETH-TV on the "non-rebuilt" portions of that system are being evaluated. TCI also represents that it is making efforts to add KETH-TV to its Highlands, Springs, Needville, and the Woodlands cable systems, provided KETH-TV delivers a signal of adequate quality to those systems' headends. TCI requests dismissal of the petition to the extent it pertains to the cable systems serving Port O'Connor and Seadrift, Texas. In its reply, CET withdrew its request for carriage of KETH-TV on TCI's Port O'Connor and Seadrift cable systems, acknowledging that it does not presently provide an adequate signal strength to fully qualify as a mandatory carriage station with respect to those two systems.

IV. DISCUSSION

6. KETH-TV and the communities of Houston, Highlands, Springs, Needville, and the Woodlands, Texas are located within the Houston ADI. Since TCI did not challenge KETH-TV's ability to deliver a good quality signal to the Houston, Highlands, Springs, Needville, and the Woodlands systems' headends, we find that KETH-TV is a "local" station with respect to these communities.⁸ TCI provided no details concerning the channel capacity of its cable systems on either the "rebuilt" or "non-rebuilt" portions of its systems. TCI also made no claim that it devotes more than one-third of the cable systems' activated channel capacity to must carry stations. On this record, we find that CET has established must carry rights for KETH-TV on TCI's cable systems serving Houston, Highlands, Springs, Needville, and the Woodlands, Texas. As noted above, cable operators have the burden of showing that a commercial station that is located within the same television market is not entitled to carriage.⁹ TCI failed to carry its burden of showing that KETH-TV is not entitled to carriage.

⁷CET petition at 2-3.

⁸CET withdrew its request for carriage in Port O'Connor and Seadrift, and therefore no findings are made with respect to those two communities.

⁹*Must Carry Order*, 8 FCC Rcd at 2990.

V. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the petition filed by Community Educational Television, Inc. ("CET") **IS GRANTED**, and TCI TKR of Houston, Inc., Tele-Vue Systems, Inc., TCI Cablevision of Texas, Inc., and TCI Woodlands Ventures, Inc. **ARE ORDERED** to commence carriage of television station KETH-TV on their Houston, Highlands, Springs, Needville, and the Woodlands, Texas cable systems within sixty (60) days of the release date of this order.¹⁰

8. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's Rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Deborah E. Klein, Chief
Consumer Protection and Competition Division
Cable Services Bureau

¹⁰TCI's opposition failed to specify which cable operator operates the cable system serving the respective communities. Therefore, the obligations of this order apply jointly and severally to all of the parties to the opposition.

¹¹47 C.F.R. § 0.321.