

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

In the Matter of:	)	
	)	
Rancho Palos Verdes Broadcasters, Inc.	)	
v.	)	CSR-6043-M
Lone Pine Television, Inc.	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 11, 2003**

**Released: April 16, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Rancho Palos Verdes Broadcasters, Inc., licensee of television broadcast station KXLA (Ch. 44), Rancho Palos Verdes, California ("KXLA") filed the above-captioned complaint against Lone Pine Television, Inc. ("Lone Pine"), for its failure to carry KXLA on its cable systems serving Lone Pine and Alabama Hills, California. An opposition to this petition was filed on behalf of Lone Pine to which KXLA replied.

**II. DISCUSSION**

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*, Broadcast Signal Carriage Issues ("*Must Carry Order*"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>1</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>2</sup>

3. In support of its complaint, KXLA states that it is an authorized full-service UHF television station licensed to a community located within the Los Angeles DMA as are the communities

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<sup>1</sup>8 FCC Rcd 2965, 2976-2977 (1993).

<sup>2</sup>Section 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, 47 C.F.R. §76.55(e), requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("*Modification Final Report and Order*").

served by Lone Pine. KXLA indicates that by letter dated September 27, 2002, it requested must carry status on the Lone Pine cable system, pursuant to Section 76.64(f) of the Commission's rules, beginning with the January 1, 2003 election period.<sup>3</sup> KXLA states that Lone Pine denied this request on October 2, 2002 based on its inability to receive an adequate off-air signal from KXLA's Mt. Wilson transmitter site.<sup>4</sup> KXLA states, however, that Lone Pine's denial failed to include any engineering showing to support its allegation of poor signal quality; a violation of Section 76.61(a)(2) of the Commission's rules.<sup>5</sup> KXLA maintains that it can provide a good quality signal to Lone Pine's principal headend. It states that it has arranged for satellite delivery of its station, at its own expense, to other cable headends in the Los Angeles DMA and has advised Lone Pine that it is prepared to use this means of delivery if necessary.<sup>6</sup> KXLA therefore requests that its complaint be granted and the Bureau order Lone Pine to commence carriage of its signal.

4. In opposition, Lone Pine states that it operates two small cable systems serving rural California communities – one cable system serves approximately 70 subscribers and the other approximately 500 subscribers.<sup>7</sup> Each system has fewer than 50 channels.<sup>8</sup> Lone Pine argues that rough California hill country and nearly 250 miles separate KXLA's transmitter site from Lone Pine's rural headends.<sup>9</sup> Lone Pine states that although it has been unable to conduct signal strength tests of KXLA's signal at its receive site because of weather conditions that preclude travel to that site, its experience is that it does not receive, and has never received, any measurable signal above channel 11.<sup>10</sup> Lone Pine maintains that KXLA's purported delivery of its signal via satellite does not demonstrate that the station has any real plans or means to deliver an adequate off-air signal and its commitment to pay the costs of such delivery are therefore meaningless.<sup>11</sup> In any event, Lone Pine points out that it is well settled that "cable operators need not employ extraordinary measures or specialized equipment in accommodating broadcast stations' carriage requests."<sup>12</sup>

5. In reply KXLA argues that because Lone Pine admits that it never tested KXLA's signal, any discussion of the station's signal quality and delivery is purely speculative and inconsistent with the requirements of Section 76.61(a)(2) of the Commission's rules governing signal testing standards.<sup>13</sup> Absent any engineering documentation, KXLA maintains that Lone Pine's claim that KXLA's carriage

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<sup>3</sup>Complaint at Exhibit A; *see also* 47 C.F.R. § 76.64(f).

<sup>4</sup>Complaint at Exhibit B.

<sup>5</sup>*Id.* at 2; *see also* 47 C.F.R. § 76.61(a)(2).

<sup>6</sup>Complaint at 3.

<sup>7</sup>Opposition at 2.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.* at 3.

<sup>10</sup>*Id.* at 2 n. 4, and 3; *see also* Exhibit A (Affidavit of Bruce Branson).

<sup>11</sup>Opposition at 4.

<sup>12</sup>*Id.*, citing *Jasas Corporation*, 14 FCC Rcd 7063, 7066 (1999) (cable operator was not obligated to allow the station to install equipment at its microwave receive sites in order to transmit its signal). *See also Paxson Salt Lake City License*, 15 FCC Rcd 7361, 7364 (2000) (broadcaster not entitled to must carry when extraordinary measures are required to deliver a good quality signal).

<sup>13</sup>Reply at 2; *see also* 47 C.F.R. § 76.61(a)(2).

should be denied on this basis is groundless.<sup>14</sup> KXLA states that Lone Pine is also misplaced in its contention that broadcast stations do not have the prerogative to deliver a good quality signal by alternative means, at their own expense, or that satellite delivery is not an acceptable alternative.<sup>15</sup> KXLA states that the Commission has never set forth an exhaustive list of permissible alternative means of delivery or excluded satellite technology from the “specialized equipment” of which broadcasters may avail themselves in order to “improve the station’s signal to an acceptable quality.”<sup>16</sup> KXLA argues further that Lone Pine confuses Commission policy when it maintains that cable operators are not required to employ extraordinary measures or specialized equipment in accommodating broadcast stations.<sup>17</sup> KXLA states that it appears that Lone Pine wishes to interpret the term “extraordinary measures” to extend to any broadcaster’s effort to deliver a good quality signal via alternative means. Such an interpretation, however, would essentially repeal Section 76.55(c)(3) of the Commission’s rules and render meaningless “the obligation of a cable operator to cooperate with a station on signal issues.”<sup>18</sup> KXLA points out that both of the cases on which Lone Pine relies in support of this contention involve a situation in which the broadcast station was attempting to deliver its signal to a location other than the cable system’s principal headend or the delivery option was premature.<sup>19</sup> KXLA states that its offer to deliver its signal via satellite to Lone Pine’s principal headend sites fully complies with any and all of the regulatory obligations imposed on broadcasters.<sup>20</sup>

6. We will grant KXLA’s complaint. Initially, with regard to procedural issues, we note that the Commission’s must carry requirements clearly set forth a two-part notification process with which stations are required to comply: the retransmission consent/must carry election notification required by Section 76.64(f) of the Commission’s rules and the demand for carriage by qualified stations set out in Section 76.61(a) of the Commission’s rules.<sup>21</sup> From the evidence before us, we find that KXLA’s September 27, 2002 letter to Lone Pine to be an election notice, pursuant to Section 76.64(f)(4) of the Commission’s rules and not an actual demand for carriage pursuant to Section 76.61(a) of the rules.<sup>22</sup> As a result, Lone Pine’s October 2, 2002 response would not have triggered the 60-day complaint cycle required by Section 76.61(a)(5) of the Commission’s rules.<sup>23</sup> However, because the parties have filed responsive pleadings in this proceeding, we see no public interest reason to dismiss KXLA’s petition and will accept KXLA’s petition in order to assess its must carry rights.

7. We find that the representations made by KXLA demonstrate that it is a local commercial television station qualified for carriage on Lone Pine’s cable systems. Under the Commission’s must carry rules, cable operators have the burden of showing that a commercial station that is located in the

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<sup>14</sup>Reply at 2.

<sup>15</sup>*Id.* at 3; see also 47 C.F.R. § 76.55(c)(3) and *Paxson Communications Corporation*, 13 FCC Rcd 20972, 20973 (1998).

<sup>16</sup>Reply at 3, citing *Paxson Communications Corporation*, 13 FCC Rcd at 20973.

<sup>17</sup>*Id.* at 3.

<sup>18</sup>*Id.* at 4, citing *Jasas Corporation*, 14 FCC Rcd at 7065 (citing *Must Carry Order*, 8 FCC Rcd at 2990).

<sup>19</sup>*Id.* at 5-6.

<sup>20</sup>*Id.* at 5.

<sup>21</sup>47 C.F.R. §§ 76.64(f) and 76.61(a).

<sup>22</sup>*Id.*

<sup>23</sup>47 C.F.R. § 76.61(a)(5).

same television market as a cable operator is not entitled to carriage.<sup>24</sup> Although Lone Pine argued in its opposition that it could not receive KXLA's signal, it did not provide any engineering data to support this argument. Because of the lack of such data, we cannot conclude that KXLA does not provide a signal of good quality to Lone Pine's principal headends. In the event that KXLA does not provide a signal of good quality to Lone Pine's principal headends, KXLA's suggested delivery of its signal via satellite is an acceptable alternative pursuant to Section 76.55(c)(3) of the Commission's rules.<sup>25</sup>

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Rancho Palos Verdes Broadcasters, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534. Lone Pine Television, Inc. **IS ORDERED** to commence carriage of KXLA on its cable systems serving Lone Pine and Alabama Hills, California, sixty (60) days from the release date of this order.

9. **IT IS FURTHER ORDERED** that KXLA shall notify Lone Pine of its channel position elections within thirty days of the release date of this order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.<sup>26</sup>

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>27</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
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<sup>24</sup>See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>25</sup>47 C.F.R. § 76.55(c)(3).

<sup>26</sup>47 C.F.R. §§ 76.57 and 76.64(f).

<sup>27</sup>47 C.F.R. § 0.283.