

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

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|---|---|------------|
| In the Matter of:   | ) |            |
|   | ) |            |
| Aerco Broadcasting, Corp.   | ) |            |
|   | ) | CSR-5505-M |
| v.  | ) |            |
|   | ) |            |
| BuenaVision CATV  | ) |            |
|   | ) |            |
| Request for Mandatory Carriage<br>of Television Station WRWR-TV,<br>San Juan, Puerto Rico | ) |            |

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 19, 2000**

**Released: May 23, 2000**

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

**I. INTRODUCTION**

1. Aerco Broadcasting, Corp. (“Aerco”), licensee of television broadcast station WRWR-TV, San Juan, Puerto Rico (“WRWR” or the “Station”), has filed a must carry complaint with the Commission pursuant to Sections 76.7 and 76.61 of the Commission’s rules, claiming that BuenaVision CATV (“BuenaVision”) has failed to commence carriage of WRWR on BuenaVision’s system serving Caguas, Aguas Buenas, Cidra, Gurabo, Juncos and San Lorenzo, Puerto Rico (“the cable communities”). No opposition to the complaint was received.

**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*, 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> A DMA is a geographic market designation that defines each television market exclusive of

<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). Until January 1, 2000, Section 76.55(e) of the Commission’s rules provided Arbitron’s “Areas of Dominant Influence,” or ADIs, published in the *1991-1992 Television Market Guide*, be used to implement the mandatory carriage rules. Effective January 1, 2000, however, Section 76.55(e) requires that a commercial

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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 is calculated.<sup>3</sup> In areas outside the contiguous 48 states, such as Puerto Rico, station markets are defined using Nielsen's 1991-1992 DMA Market and Demographic Rank Report, and Puerto Rico is considered a single market.<sup>4</sup>

### III. DISCUSSION

3. In support, Aerco asserts that WRWR is entitled to mandatory carriage on the BuenaVision system serving the cable communities because it is a full power qualified local commercial station as defined by the Commission's must carry rules. Aerco explains that WRWR is licensed to San Juan, Puerto Rico, which is in the San Juan DMA. Aerco states that BuenaVision operates a cable television system serving the cable communities, which is also within the San Juan DMA. Aerco contends that because WRWR is located within the same DMA as BuenaVision, it is entitled to mandatory carriage on the system serving the cable communities. Aerco asserts that WRWR delivers a good signal quality to the system's headend and that the cable system has ample channel capacity to carry the Station.<sup>5</sup> Aerco contends that on December 8, 1999, it formally requested BuenaVision to commence carriage of the WRWR signal on the cable system.<sup>6</sup> Aerco claims that BuenaVision did not respond to the December 8, 1999 letter in violation of Section 76.61(a) of the Commission's rules, which requires cable operators to respond in writing within 30 days of receipt of such requests.<sup>7</sup> Finally, Aerco requests that the Commission order BuenaVision to commence carriage of WRWR on its cable system in the San Juan, Puerto Rico DMA.

4. Under the Commission's rules, cable operators have the burden of showing that a commercial station located in the same television market as a cable operator is not entitled to mandatory carriage.<sup>8</sup> BuenaVision did not file an opposition to Aerco's must carry complaint nor did it respond within 30 days to Aerco's December 8, 1999 letter.<sup>9</sup> BuenaVision, therefore, has not presented any evidence that WRWR is not entitled to carriage on its system serving the cable communities.

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broadcast television station's market be defined by Nielsen Media Research's DMAs. For the must carry/retransmission consent elections that took place on October 1, 1999, commercial television stations were required to make their elections based on DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999)(*"Market Modification Final Report and Order"*).

<sup>3</sup> For a more complete description of how counties are allocated, *see* Nielsen Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>4</sup> *See* 47 C.F.R. § 76.55(e).

<sup>5</sup> Aerco asserts that WRWR delivers a signal stronger than the requisite minimum signal strength to the BuenaVision headend and points out that the cable system has a capacity of 82 channels and that there are only five commercial television stations, including WRWR, licensed to San Juan. Complaint at 5.

<sup>6</sup> Complaint at 2 and Exhibit 1.

<sup>7</sup> Complaint at 2; *see* 47 C.F.R. § 76.61(a).

<sup>8</sup> *See Must Carry Order* at 2990.

<sup>9</sup> *See* 47 C.F.R. § 76.61(a)(2).

**IV. ORDERING CLAUSES**

5. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended (47 U.S.C. § 534), that the complaint filed by Aerco Broadcasting, Corp. **IS GRANTED**. BuenaVision CATV **IS ORDERED** to commence carriage of television station WRWR-TV on its cable system serving Caguas, Aguas Buenas, Cidra, Gurabo, Juncos and San Lorenzo, Puerto Rico within sixty (60) days from the date of this *Order*.

6. This action is taken pursuant to authority delegated under Section 0.321 of the Commission's rules.<sup>10</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven Broecker, Acting Chief  
Consumer Protection and Competition Division  
Cable Services Bureau

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<sup>10</sup> 47 C.F.R. § 0.321.