

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

In the Matter of:)
Entravision Holdings, LLC)
v.) CSR-6053-M
Comcast Cable Communications, Inc.)
Request for Mandatory Carriage of)
Television Station WJAL-TV,)
Hagerstown, Maryland)

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2003

Released: April 28, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Entravision Holdings, LLC ("Entravision"), licensee of television broadcast station WJAL-TV, Hagerstown, Maryland ("WJAL" or the "Station") filed the above-captioned must carry complaint against Comcast Cable Communications, Inc. ("Comcast"), for failing to carry WJAL on its cable television systems serving the District of Columbia (including the Marine Barracks and Walter Reed Hospital), the City of Alexandria, Virginia, and communities in Montgomery County, Prince Georges County, Calvert County, Charles County and St. Marys County, Maryland (the "cable communities"). Comcast filed an opposition to which Entravision replied. For the reasons discussed below, we grant the complaint for must carry status in the cable communities.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended, 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 such as WJAL 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 "designated market area," or DMA, as defined by Nielsen Media Research. The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

1 8 FCC Rcd 2965, 2976-2977 (1993).

2 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 requires that a commercial broadcast television station's

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3. Section 614 of the Communications Act and the Commission's rules also provide that a commercial television station asserting must carry rights is required to deliver a good quality signal to the principal headend of a cable system. Because the cable operator is in the best position to know whether a given station is providing a good quality signal to the system's principal headend, the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45dBm.³

4. With regard to channel positioning rights, Section 614(b)(6) of the Communications Act and Section 76.57 of the Commission's rules provide commercial television stations electing must carry status with three channel positioning options. A station may elect to be carried on: (1) the channel number on which the station is broadcast over the air; (2) the channel number on which the station was carried on July 19, 1985; or (3) the channel number on which the station was carried on January 1, 1992. The Communications Act and the Commission's rules also provide that a broadcast station may be carried on any other channel number mutually agreed upon by the station and the cable operator.⁴

III. DISCUSSION

5. In support of its Complaint, Entravision states that its television station, WJAL, is licensed to Hagerstown, Maryland, which is in the Washington, D.C. DMA. It further states that Comcast operates cable television systems serving the District of Columbia (including the Marine Barracks and Walter Reed hospital), the City of Alexandria, Virginia, and communities in Montgomery County, Prince Georges County, Calvert County, Charles County and St. Marys County, Maryland, which are also in the Washington, D.C. DMA. Entravision contends that because WJAL is located within the same DMA as these cable systems, WJAL is entitled to mandatory carriage on the cable systems. Entravision asserts that in September 2002, it formally requested that Comcast commence carriage of WJAL's signal on its cable systems in the cable communities, and that Comcast failed to respond within 30 days.⁵ In its Opposition, Comcast claims that WJAL does not provide a signal of adequate strength or quality to the cable communities as required by Section 76.55(c)(3) of the Commission's rules, and supported this claim by submitting signal strength tests. Comcast further states that WJAL has not made a commitment to deliver a signal of adequate strength.⁶ In its Reply, Entravision admits that WJAL does not presently provide a good quality signal to the Comcast cable communities, but states it is entitled to a Commission order directing Comcast to carry the broadcast signal of WJAL within 60 days of WJAL's delivery, at its own expense, of a good quality signal, either over-the-air or by alternative means, to the cable communities.⁷

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market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

³ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁴ 47 U.S.C. § 534(b)(6); 47 C.F.R. § 76.57.

⁵ Complaint at 1-2.

⁶ Opposition at 2-3.

⁷ Reply at 2-3.

6. We grant Entravision's Complaint. A review of the signal strength tests of WJAL's signal provided by Comcast indicates that all the tests were conducted employing good engineering practices and demonstrated that WJAL does not presently provide a good quality signal to the Comcast principal headends in the cable communities. We note, however, that WJAL has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet the signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.⁸ WJAL has made this commitment to pay for any necessary equipment, and by doing so will be eligible to be carried by Comcast on its cable systems serving the cable communities when it delivers a good quality signal.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 534(d)(3), that the must carry complaint filed by Entravision Holdings, LLC, licensee of television broadcast station WJAL, Hagerstown, Maryland against Comcast Cable Communications, Inc. **IS GRANTED**. Comcast **IS ORDERED** to commence carriage of WJAL on its cable systems serving the District of Columbia (including the Marine Barracks and Walter Reed Hospital), the City of Alexandria, Virginia, and communities in Montgomery County, Prince Georges County, Calvert County, Clarks County and St. Marys County, Maryland, sixty (60) days from the date on which WJAL provides a good quality signal to Comcast's principal headends in the cable communities.

8. **IT IS FURTHER ORDERED** that WJAL shall notify Comcast in writing of its channel position election in accordance with Section 76.57 of the Commission's rules, 47 C.F.R. § 76.57, with regard to the cable systems serving the cable communities within thirty (30) days of the date it provides a good quality signal.

9. This action is taken under authority delegated by Section 0.283 of the Commission's rules.⁹

FEDERAL COMMUNICATIONS COMMISSION

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⁸ 47 C.F.R. § 76.55(c)(3).

⁹ 47 C.F.R. § 0.283.