

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

In the Matter of:
Telefutura Partnership of Douglas
v.
Comcast Cable Communications, Inc.
Request for Mandatory Carriage of
Television Station KFTU-TV,
Douglas, Arizona
CSR-6508-M

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 2005

Released: June 1, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Telefutura Partnership of Douglas ("Telefutura"), licensee of television broadcast station KFTU-TV, Channel 3, Douglas, Arizona ("KFTU" or the "Station") filed the above-captioned must carry complaint against Comcast Cable Communications, Inc. ("Comcast"), for failing to carry the signal of KFTU on its cable systems serving the Tucson, Arizona Designated Market Area. Comcast filed an opposition to which Telefutura replied.

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. A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research. A DMA is a geographic market designation that defines each television market exclusive of

1 Complaint at 1.

2 8 FCC Rcd 2965, 2976-2977 (1993).

3 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 base on viewing patterns. See 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

others, based on measured viewing patterns.

3. Pursuant to 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.<sup>4</sup> One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>5</sup> For VHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -49 dBm.<sup>6</sup> Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>7</sup>

### III. DISCUSSION

4. In support of its complaint, KFTU states that it is a full-power television station licensed to Douglas, Arizona, which is in the Tucson, Arizona DMA.<sup>8</sup> It states further that Comcast operates a cable television system that is also in the Tucson, Arizona DMA.<sup>9</sup> KFTU asserts that on October 28, 2004, it formally requested mandatory carriage of its signal on Comcast's cable system serving the Tucson, Arizona DMA.<sup>10</sup> KFTU states that, on November 23, 2004, Comcast responded indicating that it would not carry the Station because KFTU failed to deliver a good quality signal to Comcast's principal headend located in Pima County, Arizona.<sup>11</sup> KFTU asserts that it is committed to deliver, at its own expense, a good quality signal to Comcast's Pima County, Arizona headend via low power station K48GX.<sup>12</sup> KFTU states that it is filing the instant complaint in a timely fashion<sup>13</sup>

5. In opposition, Comcast asserts that KFTU does not qualify for mandatory carriage on its cable system serving the Tucson, Arizona DMA because KFTU fails to deliver a good quality signal to that headend.<sup>14</sup> To support its assertion that KFTU's signal is deficient, Comcast submitted a copy of the signal strength test it conducted on November 16, 2004, which shows that KFTU does not meet the strength and quality threshold established by the Commission's rules as the tests showed no picture, only snow.<sup>15</sup> Comcast maintains that the Commission should deny KFTU's complaint.<sup>16</sup>

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<sup>4</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>5</sup> 47 C.F.R. § 76.55(c)(3).

<sup>6</sup> 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

<sup>7</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>8</sup> Complaint at 1.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* and Exhibit A.

<sup>11</sup> *Id.* and Exhibit B.

<sup>12</sup> *Id.* at 3; see *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>13</sup> Complaint at 2; see 47 C.F.R. § 76.61

<sup>14</sup> Opposition at 1.

<sup>15</sup> *Id.* and Exhibit 1.

6. In its Reply, KFTU contends that Comcast's argument that it is not required to carry the Station's because it does not deliver a good quality signal to Comcast's principal headend is misplaced because KFTU "does deliver a signal to the headend" in question via low power television station K48GX.<sup>17</sup> KFTU reiterates that it is committed to provide a good quality signal to Comcast's Pima County headend.<sup>18</sup>

7. Section 614(a) of the Communications Act of 1934, as amended, provides that each cable operator shall carry the signals of local commercial television stations.<sup>19</sup> A local television station is defined as any full-power broadcast television station that is within the same DMA as the cable system.<sup>20</sup> It is undisputed that KFTU and Comcast are located in the same DMA – Tucson, Arizona. Under the Commission's must carry rules, a cable operator has the burden of showing that a commercial station that is located in the same DMA as the operator is not entitled to carriage.<sup>21</sup> One method of doing so is for the 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 the cable system's principal headend.<sup>22</sup> In that regard, we note that although Comcast has submitted test results showing that KFTU's signal is below the -49 dBm standard for VHF commercial television stations established by the Commission's rules, the *Must Carry Order* provides that if a station fails to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights if the station, at its own expense, provides a cable operator with specialized equipment to improve the station's signal to an acceptable quality at the cable system's principal headend or provides an acceptable signal by any other means.<sup>23</sup>

8. In this instance, Comcast has denied KFTU's carriage request based on a signal test that purports to show that KFTU does not deliver a sufficiently strong signal to Comcast's Pima County headend. KFTU maintains, nevertheless, that it is committed to acquire and install all the equipment needed to deliver a good quality signal to Comcast's principal headend. In particular, KFTU has stated that it is prepared to deliver a good quality signal to Comcast's principal headend using low power station K48GX.

9. The Commission has stated that television stations may use alternative means to deliver a good quality signal to a cable operator's principal headend and disagreed with those who asserted "that a television station's use of microwave or other means (such as a translator) to deliver a signal to the headend cannot be considered a method to provide a good quality signal to the headend. We view such methods to be no different than a television station providing improved equipment to ensure that a cable system operator receives a good quality signal for retransmission to its subscribers."<sup>24</sup> We believe KFTU's use of a low power station to provide a good quality signal to a cable system's headend is

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<sup>16</sup> *Id.*

<sup>17</sup> Reply at 1

<sup>18</sup> *Id.* at 6.

<sup>19</sup> See 47 U.S.C. § 534(a)(1).

<sup>20</sup> See 47 U.S.C. § 534(h)(1)(A).

<sup>21</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>22</sup> 47 C.F.R. § 76.55(c)(3).

<sup>23</sup> *Must Carry Order*, 8 FCC Rcd at 2991; see also 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

<sup>24</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

consistent with the preceding conclusion reached by the Commission in the *Must Carry Order*. We note, however, that low power television stations have retransmission consent rights.<sup>25</sup> Consequently, KFTU must ensure that prior to delivering a good quality signal to Comcast's principal headend, the issue of retransmission consent of the K48GX signal is resolved. Moreover, KFTU's use of low power station K48GX is conditioned upon K48GX's carriage of KFTU's signal without alteration to its programming. In view of the above, we grant KFTU's must carry Complaint conditioned upon KFTU delivering a good quality signal to Comcast's principal headend located in Pima County, Arizona.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by Telefutura Partnership of Douglas, licensee of television broadcast station KFTU-TV, Douglas, Arizona, against Comcast Cable Communications, Inc. **IS CONDITIONALLY GRANTED**.

11. **IT IS FURTHER ORDERED** that Comcast **SHALL COMMENCE CARRIAGE** of the KFTU-TV signal on its Pima County cable system within sixty (60) days after KFTU delivers a good quality signal to Comcast's Pima County principal headend.

12. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>26</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>25</sup> See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Second Report and Order"), 9 FCC Rcd 6723, 6741 (1994), where the Commission stated "[w]e continue to believe that the statute was clear that low power television stations are entitled to assert retransmission consent over their signals."

<sup>26</sup> 47 C.F.R. § 0.283.