

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

In the Matter of:
Corridor Television, L.L.P.
v.
LaVernia Cable Company LLP
Request for Mandatory Carriage of
Television Station KBEJ(TV),
Fredericksburg, Texas
CSR-6115-M

MEMORANDUM OPINION AND ORDER

Adopted: June 24, 2003

Released: June 26, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Corridor Television, L.L.P. ("Corridor"), licensee of television broadcast station KBEJ(TV), Fredericksburg, Texas ("KBEJ" or the "Station") filed the above-captioned must carry complaint against LaVernia Cable Company LLP ("LaVernia"), for failing to carry KBEJ on its cable system serving LaVernia, Texas and the surrounding areas (the "cable communities").

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.

1 Complaint at 1.

2 Id.

3 8 FCC Rcd 2965, 2976-2977 (1993).

44 Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, (continued...)

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.⁵ 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.⁶ 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.⁷

III. DISCUSSION

4. In support of its complaint, KBEJ states that it is licensed to Fredericksburg, Texas, which is in the Austin, Texas DMA. It states further that LaVernia's cable television system is also located in the Austin DMA. KBEJ contends that because it is located within the same DMA as the LaVernia cable system, it is entitled to mandatory carriage on LaVernia's cable system. KBEJ asserts that it formally requested LaVernia to commence carriage of its signal on Channel 2 of the LaVernia cable system on December 11, 2002.⁸ KBEJ claims that LaVernia denied carriage of the Station arguing that it was not obligated to carry the KBEJ signal because KBEJ failed to provide a good quality signal to LaVernia's headend.⁹ KBEJ asserts that in its response, LaVernia failed to comply with Section 76.61(a)(2) of the Commission's rules.¹⁰ According to KBEJ, it is committed to acquire and install any improvements and equipment needed to provide LaVernia with a good quality signal.¹¹ KBEJ requests that the Commission order LaVernia to commence carriage of its signal on Channel 2 of the cable system serving the cable communities.¹²

5. Commercial television broadcast stations, such as KBEJ, are entitled to carriage on cable systems located in the same DMA. Cable operators, on the other hand, have the burden of showing that a

(...continued from previous page)

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

⁵ *See Must Carry Order*, 8 FCC Rcd at 2990.

⁶ 47 C.F.R. § 76.55(c)(3).

⁷ *Must Carry Order*, 8 FCC Rcd at 2991.

⁸ Complaint at 1 and Exhibit A.

⁹ Complaint at 1 and Exhibit B.

¹⁰ Complaint at 1. Section 76.61(a)(2) states that if a cable operator denies carriage on the basis of the failure of the station to deliver a good quality signal at the cable system's principal headend, the cable operator must provide a list of equipment used to take the measurements, the point of measurement and a list and detailed description of the reception and over-the-air signal processing equipment used, including sketches such as block diagrams and a description of the methodology used for processing the signal at issue. 47 C.F.R. § 76.61(a)(2).

¹¹ Complaint at 1 and Exhibit A.

¹² Complaint at 1.

commercial station that is located in the same television market is not entitled to carriage.¹³ LaVernia has failed to meet its burden. KBEJ has committed to acquire and install, at its own expense, any and all necessary improvements and equipment needed to provide LaVernia with a good quality signal. KBEJ, by committing to provide any necessary equipment has satisfied its obligation to bear the costs associated with delivering a good quality signal.¹⁴ Thus, we find that KBEJ is entitled to mandatory carriage on LaVernia's cable system.

6. With respect to KBEJ's channel positioning request, we find that it has properly requested carriage on Channel 2 of LaVernia's system, the same channel number on which it is broadcast over-the-air. Pursuant to the Commission's rules, cable operators must comply with channel positioning requirements absent a compelling technical reason.¹⁵ Based on the foregoing, we grant KBEJ's complaint.

IV. 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 must carry complaint filed by Corridor Television, L.L.P., licensee of television broadcast station KBEJ, Fredericksburg, Texas against LaVernia Cable Company, **LLP IS GRANTED**.

8. **IT IS FURTHER ORDERED** that LaVernia Cable Company, LLP **SHALL COMMENCE CARRIAGE** of the KBEJ signal on Channel 2 of its cable system serving LaVernia, Texas and surrounding areas, within sixty (60) days from the date of the release of this *Order*.

9. This action is taken pursuant to authority delegated by Section 0.283 if the Commission's rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

¹³ See *Must Carry Order*, 8 FCC Rcd at 2990.

¹⁴ See *Must Carry Order*, 8 FCC Rcd at 2991; see, e.g. *WMPF, Inc.* 11 FCC Rcd 17264 (CSB 1996); *KSLN, Inc.*, 11 FCC Rcd 12718 (CSB 1996); see also 47 U.S.C. § 534(h)(1)(B)(iii).

¹⁵ 47 C.F.R. § 76.57; see *Must Carry Order* at 2988.

¹⁶ 47 C.F.R. § 0.283.