

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

In the Matter of:	)	
	)	
Rancho Palos Verdes Broadcasters, Inc.	)	
	)	CSR-5720-M
v.	)	
	)	
Charter Communications, LLC	)	
	)	
Request for Carriage	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 30, 2001**

**Released: October 31, 2001**

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

**I. INTRODUCTION**

1. Rancho Palos Verdes Broadcasters, Inc., permittee of television broadcast station KXLA (formerly KRPA), (Ch. 44), Rancho Palos Verdes, California (“KXLA”) filed the above-captioned complaint against Charter Communications, LLC (“Charter”), for its failure to carry KXLA on various cable systems located in the Los Angeles, California market.<sup>1</sup> An opposition to this petition was filed on behalf of Charter to which KXLA 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.<sup>2</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of

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<sup>1</sup>The California communities served by Charter to which the complaint refers are the following: Big Bear Lake, Boron, California City, Victorville, Hesperia, Phelan, Lake Arrowhead, Malibu, Agoura Hills, Hidden Hills, Mojave, Monterey Park, Azusa, Duarte, Riverside, Thousand Oaks, Glendale, Long Beach, San Bernardino, Whittier, Corral Canyon, Box Canyon, Yucaipa, Angelus Oaks, and unincorporated Los Angeles County. See Complaint at 4.

<sup>2</sup>8 FCC Rcd 2965, 1976-2977 (1993).

<sup>3</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

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others, based on measured viewing patterns.

### III. DISCUSSION

3. In support of its complaint, KXLA states that it is an authorized full-power UHF television station licensed to a community located within the Los Angeles DMA as are the communities served by Charter. KXLA indicates that by letters dated January 17, 2001, shortly after commencing broadcasting under Program Test Authority, it notified Charter that it had elected must carry status for all of Charter's cable systems in the Los Angeles DMA.<sup>4</sup> KXLA states that, on February 6, 2001, Charter responded with regard to only one of its cable systems, Victorville/Hesperia, stating that KXLA did not provide a good quality signal.<sup>5</sup> When negotiations with Charter failed, KXLA states that it demanded carriage on all of Charter's systems, by letter dated March 29, 2001.<sup>6</sup> At the same time, KXLA states that it offered to provide its signal via alternative means in order to ensure the delivery of a good quality signal and requested that Charter enter into formal, written negotiations.<sup>7</sup> Although Charter rejected written negotiations, KXLA states that the system continued oral negotiations periodically until June 25, 2001 when, in the course of a meeting, Charter agreed to provide KXLA with a signed letter agreement for carriage.<sup>8</sup> KXLA states that when Charter failed to furnish this letter on the date agreed, it filed the instant complaint, pursuant to Section 76.61(a)(5)(ii) of the Commission's rules.<sup>9</sup> KXLA maintains that, contrary to its must carry obligations, Charter appears unwilling to carry KXLA in lieu of a non-broadcast service. KXLA argues that neither the 1992 Cable Act nor the Commission's rules afford Charter such discretion. KXLA requests that the Commission require Charter to commence carriage of its signal on the subject cable systems.

4. In opposition, Charter argues that KXLA's complaint is procedurally defective and should be dismissed because it was not timely filed, pursuant to Section 76.61(a) of the Commission's rules.<sup>10</sup> Charter indicates that Section 76.61 of the Commission's rules states that no must carry complaint will be accepted by the Commission if filed more than 60 days after either the denial by a cable operator of a request for carriage or the failure of said operator to respond within 30 days of receipt of such request.<sup>11</sup> Charter notes that KXLA initially requested carriage by letters dated January 17, 2001. Charter states that it subsequently denied KXLA's request for carriage on the Victorville system in writing on February 6, 2001, and effectively denied the remaining requests as of February 16, 2001, by failing to respond.<sup>12</sup>

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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*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>4</sup>Petition at Exhibit A.

<sup>5</sup>*Id.* at Exhibit B.

<sup>6</sup>*Id.* at Exhibit C.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.* at 3.

<sup>9</sup>47 C.F.R. §76.61(a)(5)(ii).

<sup>10</sup>47 C.F.R. §76.61(a).

<sup>11</sup>47 C.F.R. §76.61(a)(5).

<sup>12</sup>Opposition at 3.

5. Charter argues that the deadline for KXLA to file a must carry complaint with regard to the Victorville system was April 7, 2001, and for the rest of the systems was April 17, 2001. Charter points out that KXLA's complaint was not filed until June 27, 2001, more than ten weeks after the deadline. Although KXLA stated that it based the timing of its complaint on its March 29, 2001 letter, Charter maintains that KXLA cannot unilaterally extend its complaint period by sending another carriage request letter in an effort to restart the 60-day clock. Further, Charter argues that the Commission should reject any argument that KXLA did not intend for its January 17<sup>th</sup> letters to constitute a must carry request because the station relied on nearly identically-phrased letters for its must carry complaints against AT&T.<sup>13</sup> In that case, Charter notes, KXLA filed its complaint precisely 90 days from the date of receipt of its letters requesting carriage. Finally, Charter asserts that any suggestions that it engaged in any meaningful "oral negotiations" with KXLA that might extend the filing deadline are similarly flawed. Charter states that the only conversations between the parties occurred on or before January 17<sup>th</sup> and consisted merely of discussions about KXLA seeking carriage.<sup>14</sup> And while it does admit that it met with KXLA on June 25<sup>th</sup>, as stated by KXLA, Charter states that this was, in part, to reiterate its position that KXLA had missed its filing deadline.<sup>15</sup>

6. Charter also argues that KXLA's complaint should be dismissed because the station does not provide a good quality signal to several of the systems' principal headends. Charter points out that the delivery of an adequate signal to a system's "principal headend" is a necessary pre-condition to invoking must carry rights.<sup>16</sup> Charter maintains that attached engineering exhibits show that KXLA does not provide a signal of good quality to the following systems: Box Canyon, Hesperia/Victorville, Riverside, Thousand Oaks, Monterey Park and California City.<sup>17</sup>

7. With regard to the issue of timeliness, KXLA states that Charter's arguments are unsupported by Commission precedent. KXLA states that, pursuant to Section 76.61(a)(1) of the Commission's rules, it sent Charter a demand for carriage upon the failure of on-going negotiations.<sup>18</sup> Thereafter, KXLA states that it timely filed its must carry complaint within the time limits prescribed by Section 76.61(a)(5)(ii) of the Commission's rules.<sup>19</sup> KXLA notes that in *Prime Time Christian Broadcasting, Inc.*, the Bureau held that, based upon the existence of on-going negotiations, an initial letter by a television broadcast station is considered an election notification, pursuant to Section 76.64(f) of the Commission's rules and not an actual demand for carriage, pursuant to Section 76.61(a) of the Commission's rules.<sup>20</sup> KXLA states that by letter dated January 17, 2001 it notified all Charter headends within the Los Angeles DMA that, as a new station, it elected mandatory carriage of its signal, pursuant to Section 76.64(f)(4) of the Commission's rules.<sup>21</sup> KXLA argues that it did not consider Charter's February 6<sup>th</sup> letter with regard to the Victorville system a denial for purposes of triggering the must carry complaint

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<sup>13</sup>*Id.* at Exhibit 3.

<sup>14</sup>*Id.* at 4.

<sup>15</sup>*Id.*

<sup>16</sup>*See* 47 U.S.C. §534(h)(B)(iii) and 47 C.F.R. §76.55(c)(3).

<sup>17</sup>Opposition at Exhibit 2 and Supplement to Opposition.

<sup>18</sup>47 C.F.R. §76.61(a)(1).

<sup>19</sup>47 C.F.R. §76.61(a)(5)(ii).

<sup>20</sup>16 FCC Rcd 7919 (2001). *See also*, 47 C.F.R. §§76.64(f) and 76.61(a).

<sup>21</sup>47 C.F.R. §76.64(f)(4).

procedures under Section 76.61 of the rules because there was none of the documentation customarily attached to such a letter and Charter invited KXLA to visit its headend sites.<sup>22</sup> KXLA states that it thus treated this letter as an invitation to continue negotiations, particularly as Charter did not take any actions which demonstrated that it was not in negotiation.<sup>23</sup> KXLA indicates that negotiations are evidenced by the number of telephone calls between the parties, the coordination of signal strength testing, the resolution of signal quality problems and the total length of time involved (January 31, 2001 through March 26, 2001).<sup>24</sup>

8. KXLA further argues that Charter's reference to KXLA's must carry complaint against AT&T is equally misplaced. Unlike the situation here, KXLA states that it did not engage in carriage negotiations with AT&T and therefore it was required to treat AT&T's failure to negotiate as a denial.<sup>25</sup> As a result, KXLA states that it filed its complaint in that case based on the lack of a response. KXLA points out that Charter's action, on the other hand, evidenced a willingness to negotiate, thereby staying the complaint date.

9. With respect to Charter's engineering analysis, KXLA points out that, pursuant to authority granted by the Commission's Mass Media Bureau, it moved its transmitter site from Santa Catalina Island to Mt. Wilson, located in Pasadena, California on July 31, 2001.<sup>26</sup> It commenced operating from the Mt. Wilson location on August 13, 2001.<sup>27</sup> As a result of this move, KXLA asserts that Charter's signal quality issue is moot because the signal strength tests which Charter performed on August 10<sup>th</sup> and 13<sup>th</sup> were apparently oriented toward Santa Catalina Island and the station was not operating from that location at that time.<sup>28</sup>

10. We will grant KXLA's complaint. With regard to procedural issues, we do not agree with Charter's contention that the instant complaint was not timely filed. 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>29</sup> From the evidence before us, we find that KXLA's January 17, 2001 letters to Charter to be election notices, pursuant to Section 76.64(f)(4) of the Commission's rules.<sup>30</sup> KXLA expressly cited this section of the Commission's rules in this letter, just as it cited Section 76.61 in its subsequent March 29<sup>th</sup> letter demanding carriage. Although Charter may have interpreted KXLA's January 17<sup>th</sup> letters to be demands for carriage because KXLA stated that "[w]e expect that our must-carry election shall result in carriage on your cable system no later than 90 days from this date," our analysis is that KXLA was merely stating its expectation that it would be carried within a certain period and was not making a formal demand. While Charter asserts that its February 6, 2001 letter with regard to its

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<sup>22</sup>Reply at 6.

<sup>23</sup>*Id.*

<sup>24</sup>Reply at Exhibit C and Exhibit A, Declaration of Peter T. Nguyen.

<sup>25</sup>*Id.* at 7.

<sup>26</sup>Reply at 3.

<sup>27</sup>*Id.*

<sup>28</sup>*See* Supplement to Opposition.

<sup>29</sup>47 C.F.R. §§76.64(f) and 76.61(a).

<sup>30</sup>47 C.F.R. §76.64(f)(4).

Victorville system or its lack of response with regard to its other systems were valid denials of carriage triggering the must carry complaint cycle, KXLA had not, at that point, made an actual demand for carriage, pursuant to Section 76.61(a) of the Commission's rules.<sup>31</sup> KXLA did file such a demand on March 29, 2001 and its complaint was filed within the required sixty days, as required by Section 76.61(a)(5) of the Commission's rules.<sup>32</sup>

11. In its opposition, Charter points to an earlier must carry complaint filed by KXLA against AT&T, alleging that the same letter used by KXLA in that case was treated as both an election and demand for carriage.<sup>33</sup> We note, however, that in that case, the timeliness of the complaint was never an issue. Further, in previous Bureau decisions, it was noted that while there was no formal request for carriage on the part of the station, the parties to the complaint raised arguments regarding the issue of the station's carriage; therefore the matter was treated as if a formal complaint had been filed.<sup>34</sup>

12. Further, given the relocation of KXLA's transmitter site, we find that the signal strength tests provided by Charter, both in its opposition and its accompanying supplement, no longer have any relevance in determining whether KXLA provides a good quality signal to Charter's principal headends. The signal tests submitted with Charter's opposition were performed on March 21, 2001. The supplementary tests were performed on August 10 and 13, 2001. KXLA ceased operating at its original transmitter site on July 31, 2001 and did not commence retransmitting from Mt. Wilson until August 13, 2001. Charter has provided no further supplementary information to indicate that any of these tests were conducted using the Mt. Wilson site. In view of the fact that KXLA is now transmitting from a new location and has pledged to bear the costs of any equipment necessary to ensure the delivery of a good quality signal, we will grant its complaint and require Charter to commence carriage of KXLA sixty (60) days after the station delivers a good quality signal.

#### IV. ORDERING CLAUSES

13. 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). Charter Communications, LLC **IS ORDERED** to commence carriage of KXLA on its cable systems serving the communities of Big Bear Lake, Boron, California City, Victorville, Hesperia, Phelan, Lake Arrowhead, Malibu, Agoura Hills, Hidden Hills, Mojave, Monterey Park, Azusa, Duarte, Riverside, Thousand Oaks, Glendale, Long Beach, San Bernardino, Whittier, Corral Canyon, Box Canyon, Yucaipa, Angelus Oaks, and unincorporated Los Angeles County, California, sixty (60) days from the date on which it delivers a good quality signal to Charter's principal headend locations.

14. **IT IS FURTHER ORDERED** that KXLA shall notify Charter of its carriage and channel position elections (§§76.56, 76.57, and 76.64(f) of the Commission's rules) within thirty days of the date it delivers a good quality signal.

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<sup>31</sup>47 C.F.R. §76.61(a).

<sup>32</sup>47 C.F.R. §76.61(a)(5).

<sup>33</sup>See *Rancho Palos Verdes Broadcasters, Inc. v. AT&T Broadband*, DA 01-2006 (released August 27, 2001).

<sup>34</sup>See *McLaughlin Broadcasting, Inc. v. Pond Branch Cable, Inc.*, 13 FCC Rcd 7225 (1998).

15. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

Deborah Klein, Chief  
Consumer Protection and Competition Division  
Cable Services Bureau