

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

In the Matter of:)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	
v.)	CSR-6044-M
K.E.D.G. Rand District Cable)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: April 11, 2003

Released: April 16, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Rancho Palos Verdes Broadcasters, Inc., licensee of television broadcast station KXLA (Ch. 44), Rancho Palos Verdes, California (“KXLA”) filed the above-captioned complaint against K.E.D.G. Rand District Cable (“Rand District”), for its failure to carry KXLA on its cable system serving the communities of Johannesburg and Randsburg, California. No opposition to this complaint has been received. For the reasons discussed below, we grant the complaint.

II. DISCUSSION

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 A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.²

3. In support of its complaint, KXLA states that it is an authorized full-service UHF television station licensed to a community located within the Los Angeles DMA as are the communities

¹8 FCC Rcd 2965, 2976-2977 (1993).

²Section 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 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*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

served by Rand District. KXLA indicates that by letter dated September 27, 2002, it requested must carry status on the Rand District cable system, pursuant to Section 76.64(f) of the Commission's rules, beginning with the January 1, 2003 election period.³ KXLA states that Rand District denied this request on October 1, 2002 based on an unsupported declaration that it could not receive KXLA's signal with its present equipment.⁴ Rand District's October 1st letter stated that the system was, at present, financially unable to add the needed equipment due to its small size.⁵ KXLA maintains that if the receipt of its signal is indeed impaired by Rand District's present equipment, it is Rand District's responsibility to replace its equipment in order to fulfill its must carry obligations.⁶ KXLA notes that while broadcasters are required to bear the costs associated with the delivery of a good quality signal to a cable system's principal headend, cable operators cannot pass the costs relating to the routine reception of broadcast signals on to broadcasters.⁷ If Rand District's inability to receive its signal is due to signal quality issues, KXLA offers to take whatever steps are necessary to ensure, at its own expense, the delivery of a good quality signal to the cable system's principal headend.⁸ KXLA states that it has arranged for satellite delivery of its station to other cable headends in the Los Angeles DMA and has advised Rand District that it is prepared to use this means of delivery if necessary.⁹ KXLA therefore requests that its complaint be granted and the Bureau order Rand District to commence carriage of its signal.

4. We will grant KXLA's complaint. Initially, with regard to procedural issues, we note that the Commission's must carry requirements 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.¹⁰ From the evidence before us, we find that KXLA's September 27, 2002 letter to Rand District to be an election notice, pursuant to Section 76.64(f)(4) of the Commission's rules and not an actual demand for carriage pursuant to Section 76.61(a) of the rules.¹¹ As a result, Rand District's October 1, 2002 response would not have triggered the 60-day complaint cycle required by Section 76.61(a)(5) of the Commission's rules.¹² However, because we will consider Rand District's October 1st letter as an informal opposition to carriage, we will accept KXLA's petition in order to assess its must carry rights.

5. We find that the representations made by KXLA demonstrate that it is a local commercial television station qualified for carriage on Rand District's cable system. Under the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the

³Complaint at Exhibit A; *see also* 47 C.F.R. § 76.64(f).

⁴Complaint at Exhibit B.

⁵*Id.* Rand District indicated that it had only 72 subscribers.

⁶*Id.*

⁷*Id.*, citing *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 4142, 4144 (1993) ("*Must Carry Clarification*").

⁸*Id.* at 4.

⁹*Id.*

¹⁰47 C.F.R. §§76.64(f) and 76.61(a).

¹¹*Id.*

¹²47 C.F.R. § 76.61(a)(5).

same television market as a cable operator is not entitled to carriage.¹³ Rand District alleged in its response to KXLA that it could not receive KXLA's signal, but it is unclear whether this conclusion was based on a signal strength test or lack of equipment on the part of the cable system as it did not provide any supporting engineering data. Because of the lack of such data, we cannot conclude that KXLA does not provide a signal of good quality to Rand District's principal headend. If Rand District's denial was based on ineffective reception equipment, however, we agree with KXLA that Rand District cannot evade its must carry responsibilities based on the small size of its system. Section 76.56(b) of the Commission's rules requires that all cable systems, regardless of size, are generally required to carry a certain number of local commercial television stations based on the channel capacity of the system.¹⁴ Cable systems with less than 300 subscribers and 12 channels or less are exempt from these requirements only so long as they do not delete from carriage the signal of a broadcast television station which was carried on the system on October 5, 1992.¹⁵ Rand District has not provided any information to conclude that this exemption is applicable.

III. ORDERING CLAUSES

6. 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. K.E.D.G. **IS ORDERED** to commence carriage of KXLA on its cable system serving Johannesburg and Randsburg, California, sixty (60) days from the release date of this order.

7. **IT IS FURTHER ORDERED** that KXLA shall notify Rand District of its channel position elections within thirty days of the release date of this order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹⁶

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division
Media Bureau

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

¹⁴47 C.F.R. § 76.56(b).

¹⁵47 C.F.R. § 76.56((b)(1).

¹⁶47 C.F.R. §§ 76.57 and 76.64(f).

¹⁷47 C.F.R. § 0.283.