

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

In the Matter of:
Better Life Television, Inc.
v.
Charter Communications
Request for Carriage of KBLN(TV)
(Channel 30), Grants Pass, Oregon
CSR-6061-M

MEMORANDUM OPINION AND ORDER

Adopted: May 7, 2003

Released: May 8, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Better Life Television, Inc. ("BLT"), licensee of television broadcast station KBLN(TV), Grants Pass, Oregon ("KBLN"), filed the above-captioned must carry complaint against Charter Communications ("Charter") pursuant to Sections 76.7 and 76.61 of the Commission's rules, asserting mandatory rights for KBLN on Charter's cable systems serving Brookings, Gold Beach and Port Orford, Oregon ("cable communities) served by Charter's Crescent City, Oregon headend.1 BLT requests that the Commission order Charter to commence carriage of KBLN on channel 30, its over-the-air broadcast channel.2 Charter Communications filed an opposition to which KBLN replied.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended ("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, such as KBLN, are entitled to assert mandatory carriage rights on cable systems located within the station's market.3 A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.4 The term DMA is a

1 Complaint at 1. KBLN asks that this Order be limited to the communities of Brookings and Gold Beach, Oregon, as it has filed a separate must carry complaint for Port Orford, Oregon. Reply at n. 4.

2 Complaint at 1.

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

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

geographic market designation that defines each television market exclusive of 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 television station that is located in the same television market is not entitled to carriage.<sup>5</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>6</sup> For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45 dBm.<sup>7</sup> Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>8</sup>

### III. DISCUSSION

4. In support of its complaint, KBLN states that it is licensed to Grants Pass, Oregon, which is in the Medford-Klamath Falls, Oregon DMA.<sup>9</sup> It states further that Charter's cable television system is also located in the Medford-Klamath Falls DMA.<sup>10</sup> KBLN contends that because it is located within the same DMA as the Charter cable system serving the cable communities, it is entitled to must carry status on Charter's cable system.<sup>11</sup> KBLN asserts that Charter did not respond in writing to its September 20, 2002 demand for mandatory carriage in the cable communities within 30 days of receipt of such demand as required by Section 76.61(a)(2) of the Commission's rules.<sup>12</sup> KBLN asserts further that Charter failed to respond to a second mandatory carriage request dated November 11, 2002.<sup>13</sup> According to KBLN, it is committed to take the necessary measures to provide Charter's Crescent City cable system with a good quality signal.<sup>14</sup> KBLN requests that the Commission order Charter to commence carriage of its signal on channel 30 of the Crescent City cable system.<sup>15</sup>

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(...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 that 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 station's market be defined by Nielsen Media Research's DMAs. *See* 47 C.F.R. § 76.55(3).

<sup>5</sup> *See Must Carry Order*, 8 FCC Rcd at 2991.

<sup>6</sup> 47 C.F.R. § 76.55(c)(3).

<sup>7</sup> 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

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

<sup>9</sup> Complaint at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* and Exhibit 1.

<sup>13</sup> *Id.* at 2 and Exhibit 3.

<sup>14</sup> *Id.* at 3.

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

5. Charter asserts that KBLN does not qualify for mandatory carriage on the Crescent City cable system because it fails to deliver a good quality signal to that headend.<sup>16</sup> Charter maintains that signal strength testing conducted at the Crescent City, Oregon headend on February 7 and 8, 2003, revealed the following readings: at 3:21 p.m., -51.25 dBm; 6:30 p.m., -53.40 dBm; 10:07 p.m. -53.25 dBm; 2:03 a.m. -54.12 dBm; 6:00 a.m., -53.87 dBm; 9:45 a.m. -53.62 dBm; and 12:37 p.m., -53.40 dBm.<sup>17</sup> Based on these readings, Charter states that the Commission should dismiss or deny KBLN's complaint.<sup>18</sup>

6. In reply, KBLN acknowledges that at the time Charter conducted the February 2003 signal strength tests it did not provide a good quality signal to Charter's Crescent City headend, but asserts that it has already taken the necessary steps to improve its signal and that it now delivers a good quality signal to Charter's Crescent City headend.<sup>19</sup> In addition, KBLN notes that pursuant to Section 76.55(c)(3) of the Commission's rules, a station can cure an inadequate signal if it, at its own expense, provides a good quality signal to the cable system.<sup>20</sup>

7. We grant BLT's must carry Complaint conditioned upon KBLN delivering a good quality signal to Charter's Crescent City principal headend. KBLN maintains that it has taken the necessary steps to improve its signal and that it can now deliver a good quality signal to Charter's Crescent City headend. The Commission has stated that specialized equipment may be employed to deliver a good quality signal to a cable system headend. The Commission, in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues Clarification Order* ("Must Carry Clarification Order"), after re-emphasizing that it was the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend, stated: "[t]his may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements..."<sup>21</sup> In view of the above, we grant KBLN's complaint.

8. Concerning KBLN's channel positioning request, we find that it has properly requested carriage on channel 30 of Charter's Crescent City system, the same channel number on which KBLN is broadcast over-the-air. Pursuant to the Commission's rules, cable operators must comply with channel positioning requirements absent a compelling technical reason.<sup>22</sup>

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<sup>16</sup> Opposition at 2.

<sup>17</sup> *Id.* at 2 and Exhibit 1.

<sup>18</sup> *Id.* at 3. Charter also argues that this Complaint should be dismissed because KBLN failed to serve a copy of the Complaint on the local franchising authorities as required by Section 76.7(a)(3) of the Commission's rules. *Id.* at n. 3. We note that KBLN cured the deficiency on March 4, 2003.

<sup>19</sup> Reply at 2-3.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Must Carry Clarification Order*, 8 FCC Rcd 4142, 4143 (1993).

<sup>22</sup> 47 C.F.R. § 76.57; see *Must Carry Order*, 8 FCC Rcd at 2988.

**IV. ORDERING CLAUSES**

9. Accordingly **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the complaint filed by Better Life Television, Inc. **IS GRANTED**. Charter Communications **IS ORDERED** to commence carriage of television station KBLN(TV) on Channel 30 of its cable system serving Brookings and Gold Beach, Oregon within 60 days from the date that station KBLN delivers a good quality signal to Charter's Crescent City, Oregon headend.

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>23</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
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<sup>23</sup> 47 C.F.R. § 0.283.