

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

In the Matter of:)	
)	
Rancho Palos Verdes Broadcasters, Inc.)	
v.)	CSR-6089-M
Communications Services)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: May 7, 2003

Released: May 12, 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 Communications Services (“Communications Services”), for its failure to carry KXLA on its cable systems serving the communities of Camarillo, Oxnard and Point Mugu, 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 served by Communications Services. KXLA indicates that by letter dated September 27, 2002, it requested must carry status on Communications Services’ cable systems, pursuant to Section 76.64(f) of

¹8 FCC Rcd 2965, 1976-2977 (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 requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. *See* 47 C.F.R. § 76.55(e).

the Commission's rules, beginning with the January 1, 2003 election period.³ KXLA states that Communications Services failed to respond to this request and, as a result, it filed the instant complaint within 60 days of the cable system's failure to respond pursuant to Section 76.61(a)(5)(ii) of the Commission's rules.⁴ KXLA maintains that it can provide a good quality signal to Communications Services' principal headends. It states that it has arranged for satellite delivery of its station to other cable headends in the Los Angeles DMA and has advised Communications Services that it is prepared to use this means of delivery if necessary.⁵ KXLA therefore requests that its complaint be granted and the Bureau order Communications Services 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.⁶ From the evidence before us, we find that KXLA's September 27, 2002 letter to Communications Services 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.⁷ As a result, Communications Services' lack of response would not have triggered the 60-day complaint cycle required by Section 76.61(a)(5) of the Commission's rules.⁸ However, because KXLA's petition is before us, we will accept it for review in order to assess its must carry rights.

5. We find that the unopposed representations made by KXLA demonstrate that it is a local commercial television station qualified for carriage on Communications Services' cable systems. Under 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 as a cable operator is not entitled to carriage.⁹ Although admittedly, Communications Services was not required to respond to KXLA until the station made a formal request for carriage pursuant to Section 76.61 of the Commission's rules, it was entitled to file an opposition to KXLA's must carry complaint had it so wished. It did not do so. In view of the foregoing, therefore, we find a grant of KXLA's complaint to be in the public interest.

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. Communications Services **IS ORDERED** to commence carriage of KXLA on its cable systems serving Camarillo, Oxnard and Point Mugu, California, sixty (60) days from the release date of this order.

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

⁴Complaint at 2; *see also* 47 C.F.R. § 76.61(a)(5)(ii).

⁵Complaint at 2.

⁶47 C.F.R. §§76.64(f) and 76.61(a).

⁷*Id.*

⁸47 C.F.R. § 76.61(a)(5).

⁹*See Must Carry Order*, 8 FCC Rcd at 2990.

7. **IT IS FURTHER ORDERED** that KXLA shall notify Communications Services of its channel position elections within thirty (30) days of the release date of this order, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹⁰

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁰47 C.F.R. §§ 76.57 and 76.64(f).

¹¹47 C.F.R. § 0.283.