

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

In the Matter of:)	
)	
Price Broadcasting, Inc.)	
v.)	CSR-6186-M
Charter Communications)	
)	
Request for Carriage)	

MEMORANDUM OPINION AND ORDER

Adopted: October 17, 2003

Released: October 21, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Price Broadcasting, Inc., licensee of television broadcast station KUTF, Price, Utah (“KUTF”), filed the above-captioned complaint against Charter Communications (“Charter”), for its failure to carry KUTF on its cable systems serving the communities of Green River, Harrisburg Junction, Hurricane, Ivins, La Verkin, Leeds, Rockville, Santa Clara, Springdale, St. George, Toquerville, Washington, and the unincorporated areas of Emery County, Utah. An opposition to this complaint was filed on behalf of Charter to which KUTF replied. 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, KUTF states that it is a full-power, commercial television

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* 47 C.F.R. § 76.55(e).

station that began broadcasting on March 8, 2003.³ KUTF states that it has already entered into an agreement to be a Telefutura Network affiliate.⁴ KUTF states that, by letter dated March 17, 2003, it formally requested carriage on its over-the-air channel, Channel 3, on Charter's cable systems serving the referenced communities.⁵ KUTF states that Charter failed to respond to its request and it filed the instant complaint within sixty days of Charter's failure to respond in order to preserve its must carry rights.⁶

4. KUTF argues that it is licensed to a city located in the Salt Lake City DMA, as are the communities served by Charter. It is thus entitled to mandatory carriage if it meets the definition of a "qualified local commercial television station" under the must carry rules.⁷ KUTF maintains that it meets this definition because carriage of its signal will not cause increased copyright liability for Charter and it will ensure that it, if it does not do so already, it will deliver a signal of good quality, at its own expense, to Charter's principal headends.⁸ KUTF therefore requests that the Commission order Charter to immediately commence carriage of its signal on its cable systems.

5. In opposition, Charter argues that KUTF's complaint should be denied because the station fails to deliver a signal of sufficient strength to the principal headends serving the communities.⁹ Charter maintains that the delivery of an adequate signal to a system's headend is a necessary precondition to invoking must carry rights.¹⁰ Charter states that there is no claim in this case that KUTF delivers an adequate signal. Indeed, it points out that signal strength tests it conducted of KUTF's signal show that the station fails to meet the signal strength criteria required by the Commission's rules.¹¹ Charter asserts, therefore, that it is under no legal obligation to carry KUTF on its systems serving the subject communities.¹²

6. In reply, KUTF argues that, regardless of whether or not it currently provides a good quality signal to Charter's headends, it has pledged to deliver a signal of good quality, at its own expense. Because it has done so, and because its carriage will not cause increased copyright liability, KUTF states that it is entitled to mandatory carriage on Charter's systems.

7. We agree with KUTF and will grant its complaint. We find that the representations made by KUTF demonstrate that it is a local commercial television station qualified for carriage on Charter's 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

³Complaint at 1, n.1.

⁴*Id.* at 2.

⁵*Id.* at Exhibit II.

⁶*Id.* at 2.

⁷*Id.* at 3, citing 47 C.F.R. § 76.55(2)-(3).

⁸*Id.*

⁹Opposition at 1.

¹⁰*Id.* at 2, citing 47 C.F.R. § 76.55(c)(3).

¹¹*Id.* at Exhibit 2.

¹²We note that Charter raised some issues in its complaint, to which KUTF responded, that are appropriate only in the context of a market modification proceeding. As a result, they are not addressed here.

carriage.¹³ Although the signal strength tests submitted by Charter indicate that KUTF does not currently deliver a good quality signal to Charters's principal headends, KUTF has agreed to bear the costs of any equipment necessary to ensure the delivery of a good quality signal. Section 76.55(c)(3) of the Commission's rules allows local commercial television stations which fail to meet signal strength criteria to provide, at their own expense, whatever equipment is necessary to ensure the delivery of a good quality signal to a cable system's principal headend.¹⁴ KUTF has made this commitment and by doing so is eligible for mandatory carriage by Charter on the subject cable systems when it provides a signal which meets the Commission's signal strength criteria.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition filed by Price Broadcasting, Inc. **IS GRANTED** pursuant to Section 614(d)(3) of the Communications Act of 1934, as amended, 47 U.S.C. §534. Charter Communications **IS ORDERED** to commence carriage of KUTF on its cable systems serving the cable communities of Green River, Harrisburg Junction, Hurricane, Ivins, La Verkin, Leeds, Rockville, Santa Clara, Springdale, St. George, Toquerville, Washington, and the unincorporated areas of Emery County, Utah sixty (60) days from the date on which KUTF delivers a good quality signal to the cable systems' principal headends.

9. **IT IS FURTHER ORDERED** that KUTF shall notify Charter of its channel position elections thirty (30) days from the date it delivers a good quality signal, pursuant to Sections 76.57 and 76.64(f) of the Commission's rules.¹⁵

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

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴47 C.F.R. § 76.5(c)(3).

¹⁵47 C.F.R. §§ 76.57 and 76.64(f).

¹⁶47 C.F.R. § 0.283.